

FEDERAL TRADE COMMISSION

I N D E X

<u>SESSIONS:</u>	<u>PAGE NO.:</u>
Secretary Daley	9
Ed Frankenberg	25
Will Clurman	40
Mark Silbergeld	59
Robert Mayer	73
Brad Handler	106
Charles Prescott	125
Sally Gustafson	148
Eileen Harrington	161
Elizabeth Jacobs	179
Lisa Rosenthal	194
Discussion on Disclosures	205
Discussion on Fair Business Practices	269
Discussion on Consumer Redress	285
Closing Issues	298

FEDERAL TRADE COMMISSION

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The above-entitled matter came on for
discussion, pursuant to notice, at 9:00 a.m.

P R O C E E D I N G S

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ROBERT PITOFSKY: Good morning everyone. Welcome. Welcome to the Federal Trade Commission's public workshop on consumer protection in the global electronic marketplace, and a special welcome to so many representatives of foreign countries who I know are here and will participate in our two-day sessions. When we address issues concerning the global electronic marketplace, we want to consider all the ways in which the internet facilitates commerce, ranging from the simple placement of an add to the completion of an entire transaction.

As most of you know, that market is growing rapidly. Between now and 2003 the value of electronic commerce worldwide is expected to increase from 70 billion to about 1.4 trillion. American consumer spending on retail goods alone is expected to increase from about 18 billion to 108 billion. But numbers alone in my opinion fail to illuminate fully the revolutionary changes in global commerce that are taking place.

In his exceptionally fine recent book

"The Lexus and the Olive Tree," Tom Friedman has some things to say about the internet that are especially relevant to the discussions that we will be having over the next several days. Friedman addresses his remarks to sellers, but much of what he says applies to the welfare of buyers as well.

Friedman wrote, "As we increasingly move into a world where the internet defines commerce, this push for common global standards is going to become unusually intensified for one very simple reason. From the minute you decide to do business on the internet as a retailer or a service provider, from the first moment you open your website, you are a global company, whether you are in India, Italy, or Indianapolis.

To do business on the internet is by definition to be global, and you'd better be able to assure customers that you can ship your goods in a timely and safe fashion, that their credit card will be safe in your site, their money will be transferred according to international standards, laws, and best practices, and that all accounting and commercial issues will be dealt with according to international norms."

I think that's exactly right. As that quote indicates, this marketplace is different. It's true that consumers have had broad access to imported goods, at least since the merchant ships of Venice first returned from the Orient. But now these transactions will not be limited to a sophisticated few merchants. American and foreign producers large and small can enter international markets almost effortlessly, and consumers have a wider access to desirable products.

But what if the products don't arrive, or the wrong product is delivered, or somehow the advertising marketing by the seller is inconsistent with the laws of the consumer's country? Should an American firm that compares the merits of different products, for example different colas, be subject to prosecution in northern Europe for violating their law against comparative advertising?

Should a clothing store be subject to prosecution in a Muslim country for exposing a woman's arms? Should a toy store be subject to prohibitions on advertising to an underage audience? And does the consumer have to bring

the action in a foreign country if the product or service never arrives or is not what was ordered?

Finally, the informal, and this is an issue that appeals especially to people in this building, the informal nature of the medium, the lack of personal contact between buyer and seller, the geographic dispersion of sellers creates new and unprecedented opportunities for consumer abuse through fraud and deception. Opportunities so great that if not effectively addressed, they can undermine the full development of this global marketplace itself.

How do we monitor the internet? How do we examine what transactions are going on, what claims are being made? How do we deal with cross border fraud? That's a daily problem in this agency. In just the last eight or ten months we brought eighty cases involving internet fraud, and I suspect that that's just the beginning of the responsibilities that we will to try to protect consumers in this new media.

These are challenging questions and, therefore, it is all the more important to start a dialogue on these issues among interested

parties. Since 1995 the Federal Trade Commission has tried to facilitate a dialogue among industry members, consumers, technology experts and government representatives concerning these emerging issues.

We have an extraordinary program planned for the next two days. Today we will hear presentations to set the stage, learn about what people think are the core protections consumers want and need, and about issues of authentication. Tomorrow we will examine the framework through which we can secure protections. We will hear discussions of the legal framework, including jurisdiction and choice of law, from both domestic and international perspectives.

We are honored these several days by the participation in the program of outstanding government, business, consumer, and academic representatives. No one has been more instrumental in addressing emerging issues and opportunities than our first speaker, the Secretary of Commerce William Daley. Along with the President and the Vice President, the Secretary has taken the measure of this new

electronic global marketplace, seen the problems that lie ahead, and has begun efforts constructively to address those problems. It's a great pleasure for me to introduce to you to this group the Secretary of Commerce, William Daley.

PRESENTATION BY SECRETARY WILLIAM DALEY

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SECRETARY WILLIAM DALEY: Thank you very much. Thank you, Mr. Chairman, for the introduction and the opportunity to speak to this very important conference, and to those who may be in the overflow room I welcome them for being with us this morning, and Commissioner Swindle and Commissioner Thompson I thank you for having me here this morning. To all the participants of the conference from our colleagues in government to the especially the private sector, we thank you for taking time in your busy schedule to participate over the next day and a half. It's extremely important.

We at the Commerce Department had a similar sort of overflow packed audience at the conference which we had last month. We were discussing ways to include e-commerce in our government statistics. The fact is people in the private sector are making billions of dollars worth of decisions about e-commerce without very reliable bases of information.

A parallel can also be made for consumers. Consumers are making major purchases

on the web often without knowing or even having heard of the companies that they're buying from. In the world of retailing consumers cannot go to the store and obviously the merchandise. They cannot talk to employees or have visual clues as to what the place is like as they may do if they shop at a mall. So we have to find new ways that consumers can obtain information.

This is extremely important, and I absolutely believe in the history of business there has never been anything like the internet. E-commerce's potential to change the way we shop, we work, we get our news, we conduct our business is enormous. It is creating businesses that would never be able to exist without it. It is creating whole new forms of businesses.

Now a mom and pop store anywhere in rural America can sell products on the internet not only nationwide but worldwide, just like a Fortune 100 company could with a massive distribution system worldwide. Soon Vice President Gore and I will release an updated report on the emerging digital economy both showing its size and the growing importance to our economy.

We released the first one last year, and we will make this an annual activity. The numbers show that our country's economy is very much tied to information technologies, for about a third of our growth has come from information technologies, and remember, this is an economy that has created over 18 million new jobs and has expanded more than any economy in peacetime history.

The declining price of information technology products has lowered overall inflation by at least 1 percent, and investments in information technologies account for more than a third of all business investment, up from just 3 percent in the mid 1960's. I was reminded of this yesterday when I was on a trade education tour in Louisville. I went to a UPS facility, and Jim Kelly, the CEO of UPS, told me that they spend about as much on information technology systems in that company then they do on airlines, and they are the eighth largest airline in the world.

Without getting into details let me preview some of the forthcoming report. I know nothing surprises all of the optimists, but even

they will be pleased with the new numbers when they come out, but the fact is e-commerce is relatively small compared to the rest of our economy. Last year business to business transactions accounted for less than 1 percent of our 9 trillion dollar economy, and even though retail sales on the internet tripled last year, they still accounted for less than 1 percent of all retail sales.

It may be small, but as we all know it is growing fast, and the point I want to make today is we need to act just as fast to deal with two issues that are of growing concern to all of us. They are privacy and of course consumer protection. If we do not deal with them there is no doubt in my mind that the internet will never be able to realize its potential with customers.

First on privacy. Survey after survey shows it is the leading cause of why people may not go on line. Chairman Pitofsky and the entire commission have worked extremely hard on this issue. The President and Vice President have asked the private sector to take the lead, and it has taken some prodding from some of us in the front of this room, and the job is not finished

by any means, but I think that we can all say that with nearly two-thirds of websites now disclosing their privacy policies or information practices, that this is a tremendous increase from last year and a very positive indication.

As all of us know to help companies develop privacy policies and enforce them, many new groups have been formed like the On-line Private Alliance, Trust-E, B.B. On Line, and CPA Web Trust. They have signed up hundreds of companies and also associations. As we look to the second issue of consumer protection, we must show similar progress. In one respect consumer protection and privacy are very different.

Unlike privacy we today have a large number of consumer protection laws and regulations. At the federal level, at the state level, at the country level, every country in the world has this, and that's how it should be so no one is allowed to cheat our consumers. What need to is ask is this. How do we adapt the existing rules to the internet?

Say the seller is in California and the buyer is in Illinois. Whose rules do we follow as the chairman stated in his opening remarks, or

can you in California comply with the rules of hundreds of jurisdictions around the world where you may sell? Maybe you won't sell across state or national lines because it's too complicated or it is not cost effective. This would obviously deprive you of an incredible market opportunity.

These jurisdictional issues are complicated just as they are for copyrights and a whole host of related issues, and they are complicated even more so on the international basis. No doubt this will take years to sort out and resolve. There is no silver bullet, but I think we have to come to a consensus on the jurisdictional issues. We need to have a dialogue, and it cannot just be government talking to government. It has to involve businesses and consumer advocates working together.

In the meantime, consumers need confidence now. In this respect privacy and consumer protection are very similar. If people don't feel safe and secure, they will not use the internet. All those rosy predictions that we all quote will never pan out. It must be the private sector that takes the lead on privacy. It must

be businesses working with consumer groups to build consumer confidence for those who shop on the web.

Consumers want to know whether the websites they are visiting are safe places to do business. Consumers want to know that they are dealing with reputable companies. There are too many cases as the chairman has stated of people who have gone on line and have not had good experiences. They may order a book and are sent a tape and then they find out they cannot return that. New technology and also old fashioned ingenuity can bring consumer confidence back.

Look at the electronic auction businesses. There have been a number of fraud complaints because not everyone in this world is a straight shooter at auctions, so companies began to offer to insure their transactions, and there is now even competition among auction sites on who can give the best insurance. Electronic escrow companies emerge saying that they would hold the money due to the seller until the buyer got the product.

Electronic assessors emerged saying that they would inspect and certify that the

merchandise was what the seller claimed, and technology on the auction sites allows people to post information on both sellers and also on the buyers. So there is an instant feedback on whether you'll be dealing with an honest person or a dishonest person, information that was hard to get before the internet.

As we get more bandwidth as President Clinton has suggested, there will be even more ways for consumers to learn about businesses so consumers can gain confidence in cyberspace as they have as they have shopped on main street. I hope at this conference you will get down to the nitty-gritty in looking at the agenda you are required to. I hope businesses and consumer groups come in, tell us what are effective consumer principles, what are good ways to enforce them, and lay out a time line for putting them into effect.

In the end a seal could be provided to give consumers some visible sign that tells them what websites may be safe, something equivalent to Good Housekeeping seal of approval as a divide. I won't stand here today and tell you in advance obviously what these principles should

be. It's not my job to tell you what to do. You know what needs to be done for your customers. You know what to do to survive in a market.

Nor will I stand up here and say that we will bless whatever industry comes up with. Industry must take a leap of faith. Industry and consumer groups together have to set the floor on consumer protection. To have to get your colleagues on board, you have to expand the base of companies that are participating, just as you are doing on privacy. Later today I understand that B.B. On Line will announce its plans to develop a code of on-line business practices. We thank you for stepping up to the plate and we look forward to seeing this and other efforts as they evolve hopefully soon.

Let me end on this: If we can work together to develop core consumer protection principles, this would be a win for the private sector and therefore prevent unnecessary government action. It will be a win with consumer protection authorities, and it would insure that good rules are in place. It would be a win for e-commerce because it would prevent needless policy making that could stifle the

internet and stifle our economy, and it would be a win for consumers obviously.

People want to shop on line. We know it saves time. We can compare prices better. We can shop all hours of the day or night, and some people even find it fun. So we hope we can work together to find ways to make this work for all of us. That's the object of this conference, that's the object of the Commission and those of us in this entire administration, and again I thank you all for participating so actively in this conference and beyond. Thank you very much.

HUGH STEVENSON: Thank you, Mr. Chairman. Thank you, Mr. Secretary. We have our charge. Thank you, Mr. Chairman, Mr. Secretary. We have our charge from the Secretary to get down to the nitty-gritty and we're ready to do that. We're moving on to the next part of our program, which is the Four Perspectives on International E-commerce and Consumer Protection. My name is Hugh Stevenson from the Federal Trade Commission, and I'll introduce this morning's presenters.

A lot of the program that we have

planned over the next two days is in the form of panel discussion, which we have found useful in the past in getting people to articulate their positions and think about and develop new ones. We thought it would be helpful here to start with some presentations snapshots if you will on how this intersection of internet and international looks from different angles, different perspectives.

We have the technological perspective, the consumer perspective, the business perspective, and the law enforcement perspective, and we're hoping these presentations will give us all a first look both at what the basic concerns are that the different participants in e-commerce have and also a look at what some of the data is out there about what's really going on, what are the surveys of the studies that are available to us now.

Before we turn to the speakers themselves a couple of other things. First, a definitional perspective if you will on the use of term e-commerce. It's obviously used by a lot of people in lot of different contexts for a lot of different purposes. It can mean slightly

different things. We thought it was worth just articulating that the staff's operating assumption has been looking at e-commerce in the context of consumer protection here is that we're dealing with transactions that are either advertised or marketed through the internet or transactions concluded through the internet or both so that one can have mixed transactions, an e-mail soliciting, a phone call, and a website that might solicit facts back, and it's important to bear in mind what we're talking about when we're talking about e-commerce and thinking about the policy, possible policy solutions that we come up with.

Second, to underscore a point that the Secretary made, it's important to bear in mind here that we're dealing with in consumer protection and e-commerce we're dealing with an area that is already governed by a body of laws and the whole bevy of law enforcers addressing these consumer protection issues. The question here is not should we bring law to the these transactions. The law is already there. The Commission for example has already brought over eighty cases related in some way to the internet,

but the issue again as the Secretary mentioned is more how should we adapt and apply those laws here and should we limit them or extend them or otherwise rearrange the legal framework which does however already exist.

It's not a clean slate that we're riding on. It's more of sort of a chalk board that already has many marks put there by many people, and in fact there are ongoing now a number of dialogues that we'll hear more about over the next two days on precisely how those laws interrelate. The OECD has an ongoing dialogue in drafting consumer protection guidelines for e-commerce. The Trans-Atlantic Consumer Dialogue has been discussing these issues. The Trans-Atlantic Business Dialogue has begun to address them, so this is obviously an area where a lot of attention is being paid right now.

A couple of logistical things I'd like to mention also. We continue to invite comments on the subjects that are governed in the workshop. The Commission has extended the deadline for submitting comments to July 1st, and we welcome input both on the policy issues that

are raised and also if you're aware of any facts or studies or surveys that you're participating in or aware of that you think would help illuminate the dialogue, we certainly welcome any material like that.

During the workshop itself we're inviting written questions for those who are listening in by audio cast, and in sort of a modest attempt to look kind of cyber smart we're taking e-mail at emarketplace@ftc.gov. If you're here in the room we're doing a kind of more retro thing where you write it on a piece of paper and hand it up to us in the front or to the FTC representatives in the back of each room.

We probably won't be able to get to many of the questions but we think it still can be very useful because of we get to them in later parts of the sessions, and also or we may get to them after the workshop is over but may still help guide people's thinking to know what issues people have, and so we also encourage that. Finally, we have an ambitious schedule and quite a number of speakers so obviously we would ask people's cooperation in sticking to that schedule.

Right now, though, we're doing very well and we're right on track, so with that I think we'll turn to the technological perspective. I should add that the overflow rooms can also submit questions and we have representatives in those rooms to handle them as well. With that, then, we'll turn to the first of four perspectives, the technological perspective. We had two thoughts in asking for these presentations.

First we wanted to lay out the four people as sort of a primer or a refresher in the basic architecture of the internet, how the organization of cyberspace relates to the geographic borders we find in real space. The second issue that we wanted to address and bear in mind is what it is possible to do with the technology or may in the near future be possible to do with the technology if it makes sense to do that.

For example, what is it possible for consumers to tell about the identities and locations of businesses we're dealing with. What is it possible for the businesses to tell about the consumers they're dealing with. To what

extent given the current technology or the possible technology can businesses put limits on geographic availability of their websites, or to what extent can consumers in their internet travels if you will limit themselves to certain geographic locations, and we think those are important issues to bear in mind.

With that we turn to our first speaker, who is Ed Frankenberg, director of web products for PSINet. We're very pleased to have him here to have the ISP perspective as well, and he'll talk about the way the world looks from where he sits, and with that I introduce Mr. Frankenberg

PRESENTATION BY ED FRANKENBERG

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EDWARD FRANKENBERG: Thank you. I'm here to talk about the technological underpinnings of electronic commerce. Before I get into the details of electronic commerce transactions, I first would like to give a brief overview of the internet and what makes it work. This colorful graphic is a depiction of the interprovider communications that's necessary for the internet to function properly.

As you can see, there is one source location that this was created from and many destinations that it was, the path was sent to. This depicts that it's a combination of a lot of different networks, multiple networks that create the internet by itself. There is no one single entity controlling the internet. It is a combination of sharing relationships among many networks.

To get more of a geographical representation of this sharing, it shows a combination of a lot of different networks. As you can see on the left side lower above net all the way down through and including of course

PSINet, the network is represented within that map. Over on the right-hand side you can see that from a location in Albany, New York in order to get to Rochester, New York it actually passes through three internet service providers BBA, Annuity, and PSINet.

This depicts that there is interprovider communication that is necessary and is considered appearing within the internet space, and this is essential for the internet to operate and it's a core foundation of the internet. Moving on to the several different layers within the internet space, I'd like to go over three specific layers if you will within the internet space. There's the internet backbone which we just saw in the previous two slides, and they carry the internet traffic, and for example is PSINet of course, CU Net which is owned by ECI WorldCom, and BBN which is also owned by GTE Internetworks.

Those are the backbones of the internet. They carry the traffic from the consumer to the merchants and also just the browsing of the internet and electronic mail messages and chat and all the other traffic that

consists of the internet. Then you have the next layer which are portals, which are the entrance points onto the internet. With the internet being the complex web of servers and information, it becomes necessary for certain websites to be developed in order to, it becomes necessary for certain websites to be developed in order to provide a directory or search engine functionality for consumers or internet users in order to be able to find the information that they need, and two examples of course are Yahoo and Lycos, which I believe is the next presentation after mine.

Then you're going to move on to the third one, which is the content providers. These are the owners of the content that resides on the internet. They own and operate and manage all the content, and there are actually many or thousands, tens or hundreds of thousand of content providers. Some are very large content providers and well known, and some of them are very small, basically home office type of organizations.

To give a few examples, America On Line, Amazon.Com, Victoria's Secret, and NASA are

actual content providers. Then there is also another layer which is the actual infrastructure. This gives you a diagram of the PSINet global

a credit card number and the credit card gets processed in real time through the internet.

There are basically four paths, or four phases to the transaction process. The first phase is the typical browsing of the website or shopping of the website. The second phase is the actual transfer of the purchase information, the credit card information from the web server to a payment system secure server. The third phase is the actual transfer of that purchase information encrypted over to a gateway server, which then goes to the fourth phase, which is out to the private financial network which is in existence today in what is being used by many, many stores, fiscal stores to process transactions.

of the shopping experience to purchase all those products, and of course a product ad log is a database if you will of all the products that that merchant is selling.

Each merchant basically has this physical infrastructure and that that physical infrastructure can either be one server where all the applications are combined onto one server or they can be three unique servers as depicted in these diagrams. These central servers can be located either at the merchant's facilities or within an internet service provider's facility. That's typically called hosting of that website or hosting of that store front.

Number 2 is the web server interacting with the payment system secure server, and this is where the information is sent. The purchase information such as the name of the consumer, all the purchasing information, credit card information and so forth is encrypted using the SSL protocol, secure socket player protocol, and sent over to a payment system secure server which is firewalled or physically kept from the public internet. So this is a local area network communications path that happens that secures the

information from the internet once it hits the payment server.

Next slide? Number 3 is the payment system. Once that information hits the payment system secure server, it then gets transmitted to a payment system database which the database works, you can go in and to use void transactions, refund transactions and so forth. This system is set up so the merchant can manage the transactions on a day by day basis. Also that information is sent to the financial network gateway, which is then sent from the financial network gateway through the private financial network, and that information is encrypted from the payment system secure server to the gateway again using the SSL technology.

And then the fourth phase, the fourth phase is where that information actually goes through the private bank network and private financial network and is processed. This is the typical four-phase approach for real-time credit card processing. When you approach a website or browse a website and purchase an item, it goes through this path. There are various -- of these four paths the merchant does not have to

implement all four of them.

The merchant can implement just one or a combination of them depending on if that merchant wants real-time credit card processing transaction, meaning that if a consumer goes to purchase a product at 2:00 in the morning, the credit card is authorized and hit at 2:00 in the morning. Or the merchant can take another approach to where that information is kept in a secure database in the third phase and then the merchant goes and does a batch transaction processing the next day, so where it's not a real-time credit card processing, and those are usually dependent upon what product the merchant is shipping, which is a relationship between the product and the merchant bank and the credit card processing on how that transaction happens.

ISP's role in the electronic commerce implementation, there are basically four service levels that can, that the service provider can offer a merchant. The first level is the most basic level. It is providing internet connectivity only to the merchant when the merchant basically has all those servers that you saw in the previous slides are physically located

at their own facility.

So the ISP is providing a connection into their facility in all the transactions and the content, and all the other information resides at the merchant's location. The next is the ISP host website only. As indicated earlier by Hugh Stevenson, there are different definitions of electronic commerce, and one definition of electronic commerce is where there is a website that provides information for you to either print off an order form that you fax back

The fourth item is where we provide a complete turnkey solution to the merchant. All the servers and everything associated with the servers are physically hosted within the internet service provider's facilities, and it's real-time credit card processing. Something to keep in mind though is this information we act basically as a shopping mall to the degree of we provide the electricity, the lights, the flooring and everything else. The actual content and the other material on this website is owned and operated and managed 24 hours a day, seven days a week by the merchant or owner of the website present.

Since the internet is a global network combining many networks into one, there is a challenge to provide the best performance to the consumer no matter where the consumer is located, no matter where the web server is located. It becomes a challenge when a web server is located say here in the Washington, D.C. area, a consumer in Tokyo Japan or in Berlin wants to access that website, they have to transfer through many networks over to the physical server here in the Washington, D.C. area.

Because this possibly provides lower performance to that consumer than if the consumer is located directly here in the Washington, D.C. area or within the East Coast of the United States, internet service providers have taken the next logical technical step and implemented what we termed global distributed hosting, where we actually host websites and store fronts on behalf of merchants in various locations throughout the world. We use a technology called load balancing in order to balance the load among these different servers.

If you look at the lower left-hand corner, it depicts two servers in Herndon, Virginia right outside Washington, D.C. here, and then on the right side it depicts two servers in London England. Above that there is a load balancing device, what I call a local area network load balancing that balances traffic between those two servers here in Herndon, Virginia and in London, England, and then there are wide area networks for balancing, which is actually balancing traffic between those two physical geographic locations.

The reason why this is important is

when the consumer up in the upper right-hand corner, and who knows where the consumer is physically located, the consumer could be physically located in Tokyo, Japan, the consumer accesses the internet through a local internet service provider, transverses the internet through many networks over to say these servers are located on the PSINet network, transverses the network over to the PSINet network, depending on network performance at the time of day that consumer is accessing the internet, depending on the server performance of the service merchant, the consumer is either directed to the server in Herndon, Virginia or the server in London, England.

It's not a random selection, but it's a selection based upon criteria at that single moment in time. It's not predetermined 24 hours head of time. It's at that single moment in time. This also depicts the whole uncertainty regarding jurisdiction issues because the merchant can be a physical location in Minnesota, the actual servers that are providing the electronic commerce functionality are based in Herndon, Virginia and London, England, and the

consumer is in Tokyo, Japan.

This brings up the global electronic commerce advantage as to why is this so important to so many merchants. It provides a 24-hour business cycle to every market. Basically we're open 24 hours a day, seven days a week. Geographic boundaries are eliminated. No longer are you, no longer is a merchant restricted to only those people within their geographic location or within just say the United States. They are now open to the world, to the globe, everyone.

It also creates customized demand for customized products. There are products out there such as your own personal CD's for music where you can incorporate whatever songs you want

global connectivity. To be able to open up the market globally requires global connectivity throughout the world both for merchants and for the consumers, and as PSINet and the internet grows more global, you'll see electronic commerce extend beyond what it is today. Multi-currency settlement, this is a big issue going back to the depiction that I had of the distributed global hosting, say the merchant was actually in Paris, France and the service were in Herndon, Virginia and London and the consumer was in Tokyo, Japan.

It would be nice for that consumer in Tokyo, Japan to purchase it in their local currency in Japan and for the merchant to settle in his or her local currency in Paris, France, and there are starting to become multi-currency service offerings for credit card processing, and one such company is World Pay based in Jersey over near the UK, but there are many, that's a challenge for many merchants and for many consumers.

I would rather purchase a product in the currency that I'm used to rather than trying to figure out the currency exchange rate and not knowing exactly what price I paid for that

product at the time. The next is language barrier. Of course given that same example, I don't speak Japanese, the website is in French, it makes it hard for me to actually purchase the product, and so merchants have to become more concerned with multilingual websites and the ability to provide that information to the consumer.

The last one is the legal uncertainty of the actual of where the electronic commerce transaction takes place, and that is depicted through the actual graphics that I displayed regarding the global distributed hosting what jurisdiction is responsible, and that's a little uncertainty which merchants are trying to deal with on how to understand what laws are applicable to them and what laws are not. With that I conclude my presentation.

HUGH STEVENSON: Thank you very much. We'll turn now to Mr. Will Clurman, who is pinch hitting for Mr. Eaves. Mr. Clurman also works for Lycos as the manager of on-line commerce services and will talk to us about the role of from the perspective of the search engines and where those road maps can take consumers.

PRESENTATION BY WILL CLURMAN

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WILL CLURMAN: Thank you. Well, good morning, and thanks for having me here. I'm very honored to be on this panel, and especially to have Ed set up because he covered all of the what we call common issues, all of the infrastructure issues that are very complicated and covered very clearly. So even though it seemed like a lot of information, that was a very good set up for everything you're going to hear going forward I suppose in the next couple of days.

A couple of key points that Ed raised are the fact that this is a global distributed infrastructure, and that even though it's global and distributed, everybody ties down somewhere. Everyone has to be on a server somewhere. That's whether you are a user, an end user consumer, or you're a merchant. So at some point these jurisdiction questions which seem on the minds of a lot of people here tie down to specific localities, and there is no uncertainty or there doesn't need to be much uncertainty about where the actual merchant lives, where the actual consumer lives.

There are technical ways to spoof that stuff and get around it and hide, but the vast majority of transactions can be known pretty precisely. So that's going to spring board us into some things that I'm going to talk about. Ed covered infrastructure, and I'm going to talk about what you can do with that infrastructure. If you look at what's out there today on the internet, there's tons of content, there's tons of activity, and there's tons of stuff to buy.

From the merchant's perspective to what you've really got is an ideal medium for direct marketing. Actually what's our time like here? What does my time look like?

HUGH STEVENSON: Fifteen, twenty minutes.

MR. CLURMAN: Fifteen, twenty minutes, that'll be good. I just to take a couple of quick questions to make sure that we're going to cover the things that are on people's minds. When I say the words direct marketing and the internet, does anybody have a reaction to that? Does anybody have a fear or a hope or an uncertainty about that? I was told not to ask any questions beforehand because this is

Washington, D.C., but I have to apologize for that.

CONFERENCE ATTENDEE: Spamming.

MR. CLURMAN: Spamming? Spamming, okay. So a fear about spamming. Other concerns or thoughts? Okay, we'll just park that spamming concern because we'll definitely hit it. Really what you've got is -- next slide, please. You've got a new kind of direct marketing, and I put that question that was on the agenda up top because I sure don't know the answer to it, and it's a difficult one, but I thought that that's a reasonable starting point, the question about how do consumers, industry, and -- well, consumers, industry, and government, oh yeah, government, how do those three different bodies with sometimes very different interests cooperate in this medium to protect, certainly to protect the consumers and also to facility commerce?

I'm going to talk to you about three technology enabled concepts which are applications of fundamental technologies that have evolved because of the internet. I'll talk about the four T's of e-commerce, which is kind of a simple way to think about a lot of the

systems that people use for direct marketing. I'm talking about dynamic pricing, which everybody is pretty aware of I'm sure.

Who here has bought something on an auction? Anybody? On line action? One, two, three, four, five? Any Beanie Baby collectors out there? Dynamic pricing is something that we won't go much into, but it's an important concept because it's a good example of what systems, what you can do with the systems just because all of the information is flowing through the system.

Finally, no technological perspective would be complete if you didn't take home some techno babble, so you'll find out what a GUID is. This question -- yeah, thanks. There's a question of third party systems, again I don't have an answer for that so we'll have to come back to it and I'm sure that's going to resurface again and again. I'm calling them third party systems because from, if you're trying to get something done, whether you're trying to regulate, whether you're trying to find out information, whether you're trying to do something with that information, you have to have systems that enable you to first of all

understand the information flowing through the internet, and secondly to take action on that information.

So here's some eye candy regarding the market today. What do consumers want? They want low transaction costs defined broadly. If you ask people who currently buy on-line they say they want things that are cheap, they want it to be convenient, and they want a broad selection. Next slide, please. The market is big, everybody knows that. 9.4 billion today in business to consumer transactions and growing to a projected 55.6 billion just a couple years out.

Next slide, please. Now into some more direct marketing things. The purchase frequency and the monetary value of transactions are rising. This is pretty dramatic. In 1997 there were, well, only 4 percent of people who were buying on line bought more than ten times, but today 17 percent of people surveyed by Ernst & Young bought more than ten times. So you've got a lot of frequent shoppers.

In addition, the amount of these transactions is rising and that's what's started to make a dent in, just trying to give you a

notable percentage of the economy going through electronic commerce revenues, and electronic commerce is as our moderator said at the start is something that's very broad and fuzzy, but business to consumer electronic commerce is growing extremely rapidly.

So given all that activity on the consumer side, on-line retailers are diving in. Merchants left and right of all flavors with all different offerings, some goods, some services, they're all jumping in, and the next slide will answer why. The four T's of e-commerce is a thing we use around Lycos and some people use in the industry to talk about what the systems really need to do if they're going to be effective and do something different from what traditional bricks and mortar merchants do.

Given that you have users and given that you have a lot of information, given that users are interacting with information in your system at all times, you have endless possibilities to track what they're doing. You have endless possibilities to know what it is that interests them, what it is that they buy, and by the way once they've bought what are they

likely to buy in the future, so you can assemble purchase transaction histories on people and make pretty accurate predictions about what they're likely to buy the next time they come in.

These are things that direct marketers in the bricks and mortar and mail, postal mail world have done for a long time. American Express has done very well with this. Lots of catalog merchandisers like Fingerhut, Publishers Clearinghouse, some of the guys that are all in your mailbox and everyone thinks of them maybe as spamming because not a lot of us sign up for those, but what if now you have infrastructure that's everywhere and enables you the merchant to sort through all of those different potential customers and find the ones who really want to buy your goods and services?

That's where the action is. So at first when you set up a store front you can expose it to the web and have people flow through it, you get a little bit of information and you do some rough targeting. You throw up some advertisements that people pay you for and you hope somebody clicks on, and if someone clicks on them and goes through and eventually purchases a

product, tries a purchase with you, then now you've got something really crucial.

You know, a single person bought a single item, and depending on how clever you are about how you use that information, you may be able to market to that person in a whole new way given that initial purchase. That's what engage and trial is all about, and I guess probably lots of people here assume that we in the internet know lots and lots about consumers that we can target endlessly, that we can track information and we know your habits, for that matter we know our habits.

We don't even know our own habits I should say. We don't have very many good ways of managing the information that flows through these systems. We need to put that out there as a set up because if you think that, if you think that what's on the internet today is a mess, then just think about what happens when you try and regulate it with tools that are going into a gigantic pool of nodes that connect in all different directions but don't have any central coordinating authority.

I just want to park that because I

suspect that if this conference is going to result in specific actual policies, then people are going to have to figure out what systems are going to get into this current fray and how they're going to control anything at all. Back to this framework here, somebody makes a purchase, somebody is uniquely identified, they have a user name now, and we know exactly what they bought at a certain point in time.

Now let's say they come through again and we offer them a similar good or maybe something in a related category. You bought a laptop last time, this time we put some luggage in front of you because you're probably a business traveller. That's how we refine targeting over time. The more trial we get, the more information we have to define the targeting. The more information we have to refine the targeting, the more we can drive transactions, and it's this virtual circle that as long as we have control over the information, as long as we're doing intelligent things with it as it flows through the system, we have the ability to continually refine our profile of the user.

Next slide, please. Now, EDM, electronic direct marketing, it's a new buzz phrase, is very similar to electronic commerce. It just takes into account that what we're doing here on the internet from a retailing standpoint is not new at all. We just have new systems and new tools that if we design them well and if we're able to harness them, then we're able to do the same things that people have done in the off-line world and bricks and mortar world but with a whole lot more precision.

So why is that? It's because all the information really is in the system. You know what someone bought. You know what, you know where they live because you have a shipping address for them. You know probably what their phone number is because they give it to you when they give you their credit card, and by the way, you know their credit card number, too. Now, I've said a lot of things about how we have information, but in my mind when I'm saying that, I'm thinking about the real, the reality of these companies today, which is that there are very few processes in place to use that information and very few systems in place that let you access it

to do meaningful things with it.

This is the context that people are thinking about setting policy in. This context doesn't really have much in the way of structure or process today, and the intervention of third party systems into this environment where the systems that are in place aren't well coordinated, aren't -- don't, they have all information in them, but there's nothing you can do with the information unless you take, unless you expend a lot energy and focus on it.

That's part of the reality of what you see today. It's part of the reason why there are so many companies jumping in because everybody really does have incremental ways and new ideas to improve what's going on. There's a large volume of electronic commerce activity, but really it's a relatively small proportion of the overall population that's buying things.

These are the early adapters, the lead users of these technologies who are enabling us, the on-line retailers, the on line services to refine our tools and make things simpler both for ourselves and for consumers out in the wide, wide world who maybe aren't so computer savvy and

don't have, don't even have access today in a large number of cases.

Let me take a couple of questions here. Anybody? Peter, I'm going to call on you. You said you were going to say some radical things.

CONFERENCE ATTENDEE: How do parent relation practices come to your four T's? What control does the consumer have over what information you collect and what you do with it?

MR. CLURMAN: That's right, I promised I'd tell you what a GUID is. A GUID is a global unique identifier, and that's what uniquely identifies you in a computer somewhere. So it's your log-in at AOL, it's your screen ID in another service, it's the thing that every piece of information that the service has on you, every piece of information the service has on you ties to that global unique identifier. That's what's global about it, cross all transaction services, content services, message board, all that stuff.

So when you signed up for that log-in. You clicked through a policy statement, you clicked through a privacy policy and hit yeah, get it out of my way, I agree to this policy,

this privacy policy and let me in. That's whatever you signed up for there. That is your contract with the on-line service. Point of fact, no one reads those contracts because they're cumbersome and they say all the usual stuff that has not much to do with you, but I can say from the perspective of someone who makes use

because that's a whole another world of wonder here that we have so much on our plates with consumer protection. Let me ask you what has, you've been talking to some degree about the information that is gotten about the consumer,

throw it up on our website when we launch a new service because we're pretty sure that nobody is going to read it.

The ease and convenience and speed that people want from on-line purchasing, you know, it's completely antagonistic to the consumption of detailed information. People generally know what they want when they go on line.

LISA ROSENTHAL: As a consumer can I use a search engine to search for let's say if I'm looking for a particular product? Can I search only for companies offering that product in a particular geographic region? If I want to limit myself to only U.S. companies for example, can Lycos facilitate that for me?

MR. CLURMAN: Absolutely, yeah.

LISA ROSENTHAL: How?

MR. CLURMAN: We have, I mean the fundamental value that Lycos offers as do the other search engines is that we have organized information and made it navigable, so when someone wants to do a search by geographic region, that's frequent by the way because people do look for the local merchants. Then we give them that option. It's part of a gigantic

structure which we call, it's actually on the main system, it's a way to organize the information, but it's all highly searchable.

If a business has registered their site with us then they have told us where the location is, and every piece of information that someone puts into one of these listings is easy to index and made searchable. So if someone wants just different indices, someone wants to sort by geographic region it's very easy to put them on to sort by product category or brand name. It's all, all the information is there and especially in the case of geographic region we make it easier. Question in the back, sir?

CONFERENCE ATTENDEE: Yes. Since you're talking about summary items, do you care to comment a little bit on this growing trend to have a virtual supply chain and have store fronts that have no inventory that they're actually drop shipping directly from manufacturers? Please comment on that.

MR. CLURMAN: Sure, yeah.

MS. ROSENTHAL: Can you repeat the question?

MR. CLURMAN: Yes. The gentleman in the

back was asking about virtual supply chains and the trend I guess led by Amazon.com towards having no inventory, having nothing but a customer aggregation point and access to distribution partners who can supply the needs of those consumers endlessly. Amazon started in books, and now the latest thing I hear that they're doing is launching a toy store coming soon.

Lycos is pursuing a similar strategy. In the industry people talk about being the merchants of record. It's a, I guess it's a legal term that has to do with who takes the liability for the transaction. Who's on the hook if the goods don't get delivered. That's a tricky business model for most consumer aggregators, so Lycos is a user aggregator. Yahoo is a user aggregator. AOL is a user aggregator, and in the past these large websites that aggregate users did not want to be on the hook for taking the transactions and delivering the goods, because then if you failed to deliver the goods or if the consumer walks away with it without paying, you are the merchant and you lose the money.

The trend toward taking on that risk is I think it's very natural. It's something that we're pursuing. It's not something that companies jump into right away, but especially this holiday season you're going to see tons and tons of them who have sorted through all the issues over the past three or four months and who are trying to make a big splash starting September. Did you want to follow it up? I'm not sure if I really got to you back there.

CONFERENCE ATTENDEE: No, I think that's good.

HUGH STEVENSON: Thank you, Mr. Clurman. I think we want to keep moving along. We appreciate your input. We're going to turn now to the consumer perspective, but before we do I'd just like to ask the speakers if they could try to speak into the microphones and pull them close to you, and when there are questions just it is helpful to repeat the question so that the people who are listening in the overflow rooms can hear that.

We turn now as I said to the consumer perspective and what international e-commerce looks like from the consumer point of view.

Consumer protection has as the chairman noted until recently had a largely domestic focus in terms of the transactions themselves. We've seen some changes in that even aside from the internet with telemarketing and direct mail, but the internet obviously vastly expands that percentile, and to speak for that first we have Mark Silbergeld who's the co-director of the Washington office for Consumers Union to bring us the consumer's point of view.

PRESENTATION BY MARK SILBERGELD

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MR. SILBERGELD: When the history of Federal Trade Commission is rewritten for the umpteenth time in let's say the year 2025, I think that one of the things that will be said of it is that it doesn't fall behind the curve. This is a very sharp curve that the internet is throwing at retailing. I don't think Sandy Kofax ever threw one as hard or as sharp, and it's one that keeps on going and it keeps on curving.

I think these hearings are yet another step in the commission's attempt to keep up with the curve, and I complement the commissioners and the Bureau for everything that it's done. You're a long way from finished. Every time I hear or talk to businesses who are somehow connected with e-commerce, I hear them say that business needs to lead the way and government needs to get out of the way, meaning that they don't want government rules about things that go on the internet.

Well, let me say something on behalf of consumers right now and let me put it in terms that I think are understandable. My 14-year-old

has some rules about keeping his room in a condition where at least he can find the necessities of life such as his shoes on the way out the door to school, his homework and so forth and so on. He couldn't get out of those rules by saying that he wants to go live in the garage. There still have to be some rules.

If business sets a sufficient set of rules to protect consumers, then government can look to adopting those rules. If it doesn't, government will adopt rules that are different than the rules that business would like to have apply to these kinds of transactions. The other thing that I find when business talks about the government keeping off the internet and letting business set the rules is that large reputable corporations grossly underestimate the number of sharks and barracudas that are swimming in the sea.

They really believe that if reputable merchants and reputable consumer aggregators I think is the term I just heard get together and have a set of voluntary rules that is sufficient to protect consumers, we won't need any government rules. And I just don't believe

that's true, and you can go through history of law enforcement by the Bureau of Consumer Protection and find that that is not true.

No matter how good the rules are and no matter how many reputable companies who sell their stock on the stock exchange and get their names in the papers a lot for good reasons stick to those rules, you're going to have a huge number of outriders who need rules and they are increasingly going to be difficult for governments to reach. They're going to set up in one remote company -- country to do business with consumers in other countries.

They are going to do things that some people have done in the past such as buy private islands if that is going to increase their community to run a scam, and so the rules don't just have to be sufficient to deal with the retailers that we all know and are willing to purchase from. They have to be sufficient to protect the unwary from the unconscionable, and I think that the commission knows that and I hope that the businesses who are eagerly looking at what the commission is and is not going to do and talking to the Department of Commerce and you as

trade representative and others who have a stake in formulating broad U.S. policy in this area understand that and can swallow hard and accept that, because consumers are not going to accept a situation where shopping on-line is like going to a beach that may only have sharks every other weekend but nonetheless there's a risk of sharks. They want some rules.

What do consumers want the rules to do? There are about seven things that consumers expect out of a set of rules, whether they're voluntary or whether they're mandatory. They want to understand the terms of the transaction and they want to understand it in their own language and they want it in a simple form that they can understand, not just the legal contract thrown up on the screen, even one for downloading. They don't want to have to go to a lawyer to know if they should buy a vacuum cleaner.

Those terms include privacy and others in an attempt to bifurcate for analysis reasons, consumer protection and privacy in my mind privacy is a subset of consumer protection, and although that separation is useful because

privacy is such a difficult area, they want to know all of the terms in the transaction, including their privacy rights and what will be made of the information that they are both positively and really voluntarily by means of logging on and entering particular sites providing the seller.

They want to know what means there is for cancelling contracts, especially those that involve substantial sums. They want to know what complaint mechanisms are available when a transaction is not satisfactory and whether that mechanism seems to give them effective redress. They want to know what limits there are on their liability, especially when they make and are engaging in transactions in which they communicate their credit card identification, their bank checking account number.

These are things that they already do of course in telephone transactions and mail transactions, but increasingly they will be doing this to people in places they have not been and people who they have a feeling neither they nor perhaps their government may be able to trace, and they want to know therefore what limits there

are on their liability. Some of that is the seller's responsibility of course and that is the third party credit card issuer's responsibility if that's the kind of payment mechanism they're using, but they want to know that.

They want to know if unreasonable contract terms are non-enforcable as they are in the United States when they're dealing with foreign sellers. They want to know where they're going to have recourse if a transaction of a large amount should necessarily result in some kind of legal proceeding. And finally they want to know what their government is doing, including cooperative efforts with other governments, when the transaction is international.

Now, these kinds of principles can be fleshed out, but that last is as important as anything that I said before it. You can have terms that are somewhat better than what we would recommend or what business would recommend, somewhat less than what we would recommend, you can fiddle around with how satisfactory the details of the rules are, but if the United States government cannot help American consumers deal with sellers in places like Belyarus or New

Guinea or wherever somebody may set up on a private island to avoid jurisdiction, then they want to know that they are engaging in an especially risky transaction, and to me the biggest challenge although it is a big challenge is not setting the exact rules or guidelines under which government will take legal action.

It is in securing cooperations among governments to assure that the geographical limits of jurisdiction can be overcome, and without that assurance let me tell you that there will be many, many transactions that consumers will not engage in no matter how attractive the product or the price because they do not want to take the risk that if something is wrong that the seller cannot be reached and that their money is down the drain.

There are specifics to the rules of course. Consumers want to know the real name of the company, the trade name of the company that can identify it for enforcement purposes. They want to know the real geographical address of that company, not some rented lock box somewhere. They want to know a phone number, a fax number, a e-mail number of the company.

Hopefully those things exist. With most retailers of course they will, and providing that increases consumer confidence that they're dealing with a reputable seller, a seller with whom they would like to do business more than once.

Not providing that in my view will soon become an item very high on the chit sheet of sellers not to deal with on the internet. If a company is engaging in business in a country that requires a licensing registration to do business, they want to know where they're registered to do business. They want information on the offer, they want to know the length and validity of the offer.

I was really concerned to hear about real-time pricing. Of course that's what you do any time you buy an airline ticket with most airlines, but if you couple that with the kind of information that can be collected about particular users through their user ID's, and let's say a seller can identify a particular user from past transactions, even past transactions with other sellers, because the information is collected and sold as someone who makes purchases

within five minutes of logging on.

Smart sellers will soon learn to raise the price for those sellers, and when you have a real-time constant changing price, you can learn to take advantage of people. It's not like seeing in the newspapers that something is on sale for the entire weekend for a set price. It's not even like bargaining with somebody. I wouldn't mind real-time pricing where an internet site said can you identify a site that is offering this product for less, give us the site address, we'll check it out in two seconds and match that.

That would be to the consumer's advantage. When consumers are being targeted based on tracking of their purchasing habits and having the price adjusted because they're in a hurry or because they may be unfamiliar with the retailer, then they may quickly learn not to deal with companies that can change prices. How they're going to identify that of course I don't know that. That will remain in part for the markets to deal with, but maybe the rules need to say how long the price is good for, how long it has been good for.

Any of the warnings, safety or care warnings about the product that you could see in the store or in the catalog, if I shop for clothing in a catalog it may say dry clean only. If it says nothing on the net site, I've got a problem with that seller. There may be questions of additional duties and taxes on goods coming in. This may seem irrelevant now.

For those of you who live in this area you may have noticed that I live in Maryland. Our former governor and now our state controller has warned consumers in Maryland that if they're buying from out of state by mail, they owe the use tax and the state of Maryland is going to seek to begin collecting that use tax from Maryland consumers because the controller says it's costing Maryland retailers money.

Well, you're going to have the same question with goods that are subject to duties on goods or on services. If that's not disclosed and people find that state or federal officials are seeking to collect taxes, duties, especially duties at the federal level, and that hasn't been disclosed, well, that really is part of the transaction costs and consumers want to know

that.

Information on the terms and conditions, they want to know the main characteristics of goods and services. They want to know the terms of payment. They want to know what the information is on the liability of the supplier. For instance, let's take books purchased on-line. Somebody may represent that a particular title is being sold. If that title is being sold from some distant country, it may appear to be a popular title on the New York Time's best sellers if I can use that term given this week's developments, but what if it's a pirate copy, poorly bound, misprinted, abridged, not what it appears to be from the title listed?

Consumers want to know what they're getting and they want to know that the goods are really what they're represented to be. It's no different than the rules are now. They want to know the details of cooling off periods in the case of large purchases, in the case of financial services sold on-line, every time I log on to one of your competitors now I get some kind of an offer for a home mortgage, this loan, a car loan, and that loan.

I'm not sure why because I've never visited a car site so I don't know why that pops that one up for me, but --

MR. CLURMAN: Targeting.

MR. SILBERGELD: Well, they haven't done a very good job in this case, or maybe they developed from the registration that our second car is about ten years old now. They want to know what the complaint procedures are. They want to know what conditions are for returning, exchanging, cancelling goods and getting a refund, whether they can get a refund, and they want to know what the privacy policy is and I think that they also want confirmation that they can download and save on the transaction when it's completed.

HUGH STEVENSON: Mark, you mentioned various things that in your view consumers want. Are you aware of empirical studies on what for example some of the items that you mentioned which I think are also things that have been raised in the Trans-Atlantic Consumer Dialogue recommendations, are you aware of empirical studies looking at what for example consumers have either indicated they want or demonstrated

through their buying patterns?

MR. SILBERGELD: I have not, and they may well exist. I don't do this issue full-time. I think perhaps somebody sitting at the table may be more aware of it than I. In fact he had empirical study as part of his presentation. You mentioned the Trans-Atlantic Consumer Dialogue. That's one thing I didn't say to you and I'd like to get this in.

What I said is based upon what the

empirical studies to tell us about, and this is a study that he has been working on on behalf of Consumers International, and the professor is also involved with Consumers International. So to present the results which I believe were just released last week.

PRESENTATION BY ROBERT MAYER

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MR. MAYER: They haven't quite been released yet.

HUGH STEVENSON: Oh, they haven't? So this is really hot news.

MR. MAYER: While the overhead is getting set up I want to echo Mark's remarks by thanking the commissioners, Director Bernstein and the staff of the FTC for holding these hearings and for inviting consumer perspectives to be heard. It doesn't always occur and we don't take it for granted. As was just mentioned, this study is still in progress.

Our friends in Greece were a little slow getting all their data selection done, and we're still gleaning the data. So you are very much seeing preliminary results. That's another reason why I didn't have time to put this into a fancy power point type presentation which I would have like to have done, and the final report will not be out until the end of June, so you are seeing a work in progress.

This study was -- thanks. This study was funded by the European Union. It was

coordinated by Consumers International and involved researchers involved in eleven countries working together to collect the data, and we had three objectives in this study. The first was to document consumer experiences buying over the internet both from domestic sites and from foreign sites.

Secondly, to identify consumer problems that were experienced as well as company practices that reduce or prevent consumer problems, and finally to make policy recommendations. Now, I'm not going to talk much about that today. You just heard some policy recommendations from Mark, and you have some Blue Chip consumer advocates here who will be speaking later, Jean Ann Fox, Linda Golodner among them who will probably talk about policy recommendations. I'm going to present the data and let them speak for themselves.

Briefly, the countries participating in the study were eleven, and although the study was funded by the European Union, it was not confined to countries in the European Union. The organizations that were represented were major international organizations involved in consumer

research and education, and I participated by virtue of my membership in the American Council on Consumer Interests.

We came up with a shopping list that each of us followed once within our domestic market and once overseas. We didn't have the luxury of buying airplane tickets or cars, we didn't have the funding for that, but we were able to purchase items in the \$25 to \$50 range, and these include many of the most popular items purchased on the internet, for example books, software, computer RAM, a toy, a travel hair drier, jeans, champagne, and chocolates, and we had to send back everything except for the champagne and chocolate to see how firms did on their refund policies, and I didn't even get to keep the champagne because I live in Utah and we're not allowed to bring alcohol into the state via the internet, so I had to send it to my brother, and he's apparently going to hold it until I visit him next.

So each of these eight products were purchased once within our own country and once within another country. We tried to approximate the way a normal relatively naive consumer would

approach the internet. We tried to use well known sites. We tried to use sites that were listed in major search engines like Yahoo or Lycos or Infoseek. We selected sites that we came across that were recommended in computer magazines as excellent sites.

And finally, we tried to try avoid buying coal from New Castle. In other words, although we were supposed to buy a Barbie, I was exempted from that, because what U.S. buyer would go to Austria or Australia to buy a Barbie? So my task was to buy a doll from another country that was produced in that country. Otherwise it wouldn't be realistic.

For the ten non-U.S. buyers, they were encouraged not to buy exclusively from the United States. That was a tendency that people would have with such a large market, virtually everyone spoke English, they were told to try to spread their purchases around, and of their eight foreign purchases they averaged between three and four from the United States.

And most importantly we tried, we didn't make a special effort to go after lousy sites. That would have been a highly biased way

of doing things. We would have found way more problems than the typical consumer would encountered. That's why I said we went to these well known sites, we even took sites that were recommended in major magazines.

The key areas of investigation were many of the same areas that Mark just addressed. What's the quality of the information about the seller? How complete is the price and cost information? How clear is the information about your right to review, confirm, and cancel an order, the privacy and security practices, confirmation practices, the speed of delivery, choices of delivery methods, the ease and speed of refunds, and dispute resolution procedures as well as jurisdictional issues.

The study has three major strengths as I see it. Firstly, our focus on transborder purchases, the first study that we know of that has done this. From our perspective in the United States it gives us the ability to compare U.S. sites with non-U.S. sites and recover the full range of the buying experience. Not a single connection like the privacy issues, and those have been studied very well, but not in the

context of these other issues, and later we'll be hearing about the results in the FTC study that took the buying process part of the way but didn't go all the way to the point of actually buying, giving credit card information, trying to return products.

So those are the three major strengths of the study, but of course there are some limitations. The major one I would say is we didn't have a firm sampling frame. In other words, we didn't systematically sample from a known population the way you would in a public opinion survey. We rather tried to go after a naturalistic approach of looking at how the consumer would normally buy on the internet and try to approximate that, but that does lead to problems of general liability and replicability. In other words if you wanted to do the exact same study again in a year you'd have to live with the somewhat fudgy approach towards selection sites as the typical consumer would.

There's also a limited number of sites in the study, especially in individual countries. In the United States the number was decent, but in Switzerland or in Australia or Austria the

number was rather limited, and really I shouldn't say there were few less developed nations. There were no less developed nations included in our sample, and the limited product coverage that I already mention we had to limit ourself to relatively inexpensive products and we did not try to test auction sites.

So you have to look at this as an exploratory study that raises issues for further investigation, not that's going to answer questions once and for all. Finally I'd like to put the results I'm about to give you in the perspective of a couple of things. Firstly, consumer groups should not be viewed as trying to slow down the development of e-commerce.

Consumers as a group have more at stake in the success of e-commerce than any individual firm does. There are tremendous potential advantages for consumers. All consumer groups recognize these. Even my mother, my 80-year-old mother who's afraid of the internet, would have to agree that it does provide tremendous advantages for certain consumers who are retail poor, by which I mean people who don't live in a retail rich environment, perhaps rural areas,

that it's great for finding hard to find items, that for mailing gifts at Christmas time there is no better way to do it than by over the internet.

Travel products, colleagues from Europe who were coming to this conference told me what hotel they were staying at, they told me what they were paying, I went on the internet, I got the same hotel for 50 percent less in about five minutes of shopping, and even if you don't consummate purchases over the internet it's a tremendous source of product information, and if we can extend that to the international marketplace to the global marketplace, this only magnifies whatever the benefits of e-commerce are.

So consumers have a tremendous stake and want to see it succeed. In our study we found many excellent sites that provided perfect information, favorable refund policies, every good privacy protection, and I don't want us to lose sight of that because I'm going to be focusing on more of the problems that we found, but there are many excellent sites.

And finally, a traveler's worst

nightmare is losing his or her luggage. A consumer's worse nightmare on the internet is probably having your credit card number stolen, and we did not experience that, not once in our 150 to 175 purchases. So that is very good news. The worst thing did not happen, but there were many problems, and the first one was simply finding appropriate sites to buy from overseas.

Some of the things you would think would be most obvious, if you wanted to buy chocolate you'd go to Switzerland or Belgium. If you wanted to buy champagne you'd go to France. If you wanted to buy a nice consumer electronic item, a small appliance, Germans are known for making those products, very high quality products.

One of the, I had trouble buying alcohol for Utah, for a while I thought maybe I'd just buy olive oil from Italy. This raises a lot of the same issues. This comes in a bottle and let's see if it comes broken or not. It was very difficult to find sites such as these on the internet currently, even using the facilities where you can go in and say just give me sites in France. So it's not that easy to find foreign

sites.

Some of the sites display products but only serve wholesalers or retailers, and that doesn't do a lot for the consumer, and some will only serve particular geographic areas, and I'll return to that problem in a second. So in terms of the countries we ultimately selected and we completed our data on 152 sites out of 176 that we ultimately will have, 45 are in the United States, 23 are in the United Kingdom, 42 are in other European Union nations, and 42 are in other non-European Union nations.

The first thing we looked for was information about the identity of the seller, and this seems to be pretty consistent with what I think we'll hear later about the FTC study. 83 percent of the sites gave an e-mail address. You would imagine that would be closer to 100. 74 percent a phone number. 72 percent, so slightly less than three-quarters actually told you where their company was located and gave you a physical address, and then a much smaller number gave a registration number or a contact person's name.

I don't even know what the registration number would be. My European friends told me

this is very important, but only a very, very small percentage gave that information, and one of the things we encountered was the URL switches within the purchase transaction. This may have to do something with the load balancing, I'm not sure.

Some of these switches, next one please, could be potentially problematic for the consumer. Fortunately we didn't encounter that. For example, in terms of jurisdictions or dispute if you switched within your own country, that's not going to have a big impact on jurisdictional issues. Nor within the same foreign country, which we experienced, or from a foreign country to your own country, which we experienced. That would generally clear things up for the consumer.

What you really are worried about is a switch from a domestic site to a foreign site or among different foreign sites. We did not experience that, but that's something one would want to be very sensitive to as far as consumer protection. As far as price information, 76 percent of the sites gave very clear price and cost information, generally costs involving

subpoenaing.

In the United States this figure was slightly slower at 71 percent, but that's because only of the eight of the forty-five visits to U.S. sites were done by the domestic purchaser. So you're seeing a large percentage of those involving U.S. firms selling to people overseas where shipping is not always clear up front, and so all of the U.S. domestic sites were perfectly clear and gave accurate price and shipping information, but only 65 percent of the U.S. sites gave clear pricing costs information when selling overseas.

Again most of the difference regards shipping costs, and again buying from the domestic sites, and this is true in the United States and elsewhere, obviously you get much clearer information because firms have a better handle on what it will cost to ship you a product. In the ordering process the good news is that 89 percent of sites overall and 93 percent of the U.S. sites provided consumers with a clear chance to review the details of their purchase, and 92 percent of sites overall, including 95 in the United States, gave the

consumer the last chance to clear the order, the opportunity, or it made it clear when you were reaching the end of the purchase decision, it said this is your last bit of information, but see, that's separate from the opportunity to cancel.

49 percent of sites gave you in addition a chance to change your mind and cancel your purchase at that point before actually giving your credit card information or sending your credit card information, and again the percentages were slightly higher in the United States. The problem one often experienced in a site that didn't have a cancellation opportunity was you had to use the back bar, and when you do that sometimes you can't go back. Other times you don't know the information has been cleared by going backwards.

So half the sites did not give consumers a clear chance to cancel and left consumers in a pretty problematic, confused

completed the order, we submitted our credit card information, and only then were told by the site they didn't sell to our country, and this was despite that fact at one site I visited that they said we are happy to fulfill international orders.

Consumers are already worried enough about the misuse of their credit card information when it's sent over the internet. There's no excuse for accepting that information and only then telling consumers that they don't transact with your country. As far as payment option goes, this is a lesson for me. This varies a lot by country. 85 percent of all sites did accept credit cards, but COD, which is something I remember from my childhood, it seems to be still a very common way of buying in a number of countries, especially in the Scandinavian countries and in Germany, and so this was the most common payment option in some of those countries, more common than using credit cards.

Even when credit cards are available we shouldn't assume they provide fabulous protections for consumers, and I call this credit card deficit, and here you run into this problem

the site even though they were using a credit card, which takes away a lot of the inconvenience of using a credit card.

So the overall point here is that there is a conflict between consumer objectives here and firms need to try to find ways that maximize post the consumer desire to make sure their card is not being used, but also convenience in using that credit card, because the credit card does provide the consumer with excellent protections.

I'm not going to say much about privacy. I realize this is a very hot topic and it has been addressed elsewhere, but I'd like to point out some good news and some not so good news. First was the mandatory collection of nonessential personal information like your age, your sex, was very rare. We found that in a very small percentage of sites less than 5 percent typically.

On the other hand, a small minority of firms, although it's higher in the U.S., still provide consumers with an explicit way to not be added to a mailing list or a general policy that they don't do this, or give consumers the option of not having their information passed to a third

party. These percentages were 17 and 14 percent respectively overall, and 25 and 23 in the United States.

One other privacy issue I'll mention very briefly is cookies, and I call this problem "Eat Your Cookies Or Else". A few sites would not allow transactions to occur if you wanted to keep your browser set so you would not accept cookies, and perhaps this is a problem that will take care of itself in the marketplace, because consumers who are forced to accept cookies will simply say I'm not going to shop here, and that will send message to firms that you can't do that, unless of course most firms adopt this policy, in which case the consumers wouldn't have a choice. So my hope here is that market mechanisms will take care of this problem of eat your cookies or else.

Site security, which I don't perceive the same as site privacy issues, we found 61 percent of sites overall provided some indications that the transaction was secured. It could be a statement, it could be simply an icon that switches to a locked position, and in the United States the percentage was 80 percent

of sites show that their sites were secure for the transaction.

44 percent of sites and 57 in the United States in addition had statements about why they're sites were secured to explain that to the consumer. Regarding returns, again this is one of the most unique studies of our features, unique features of our study was that we did go through the return process. It's not very fun going to the post office, rewrapping, and waiting for your money to be refunded.

First we looked at whether or not this information was available on the site, and we found that 53 percent of sites overall, 70 percent in the United States, did provide information on the site about how it was returning the goods. We also asked was it easier to find, and we defined easy to find as one click away from either the order page or home page, so of those 53 percent, 54 percent were rated as easy to find. Two clicks, you might consider that easy to find.

We did not for the purposes of our study were easy to find, so 53 times 54 gives you 29 percent of sites and it's easy to find

information on-site about your returns policy that you would have before purchasing. Jurisdictional issues, we found that 18 percent of all sites did mention which laws would apply. This may be a slight underestimate because the way we asked it was right after our question about terms and conditions, and some of our buyers may have considered this was this part of the terms and conditions statement and not all the sites had in terms of condition statement, so at this point we're going back and rechecking the data to make sure that this information was not somewhere else on the site, but so far we haven't found any examples of that.

So I think that 18 percent figure is pretty accurate and it's very germane to our state about which jurisdiction should apply and whether it should be resolved by just telling the

"In case of a disagreement, the Commerce Law Court of Toulouse is the only one competent to solve this matter." I don't know what that tells the consumer.

As far as order processing, order processing, 64 percent and 82 percent in the United States did provide e-mail confirmation of the purchase, and 12 percent of sites, 23 percent in the United States sent an additional e-mail to say your order, or it could be in the same confirmation order saying your item has been sent.

Regarding delivery time, 60 percent, 59% percent of sites did provide a target delivery time. Sometimes this answered a choice of delivery methods, each of which carried different delivery time, and only 54 percent of the sites actually met their delivery time, so maybe it's better not to have a delivery time and just wait.

As far as delivery times go, the typical U.S. domestic delivery time was about a week. The typical U.S. delivery time when a good was sent from abroad was about two weeks. One would assume however that this would be the case

in other countries, and it was not. There were many countries in the study where the delivery time to buy something from a site in your own country and to buy something from a site in another country was about the same.

The four countries where this was most notable were Australia, Belgium, Hong Kong, and Sweden, and I can't find a common denominator there. You could say well, Belgium, sure, that'd be true because within Belgium and from Germany to Belgium, that's about the same distance, sure, that might be true. But what about Australia? You would think that Australia sites from abroad would take much longer to arrive in Australia than they do from sites within Australia, but this was not the case.

So consumers cannot use the heuristic that if I'm worried about getting a product quickly I better buy it domestically, because at this point there's at least in a number of our countries there was no difference in delivery time, and some of the delivery problems were severe. I call this problem "Christmas In February," and I experienced this in my own shopping.

I ordered champagne from the UK. I placed my order on December 8th. I sent it to my brother in California where they do allow you to import alcoholic beverages, and I hoped it would arrive in time for Christmas, certainly in time for New Year's. Well, I had to recontact them in them in late January saying where's the shipment, and it finally arrived on February 6th. So it took a very long time, certainly from December 8th to February 6th is about two months, to arrive, which is really not what one would expect as a consumer.

Now, maybe to get England back for

consider if you do have a problem, there's many sites don't have information about how to return the item.

The cost of return is very high, and only again in 18 percent of the sites were the jurisdictions clear. I want to say more about the cost of returning the items. Recall, 53 percent of the items did have a return policy on site. 24 percent of the items included with the shipment information about returning the item. There were some overlap between these two and we haven't sorted that out yet, but that would be a maximum of 77 percent of sites gave information either on site or with the product on how to return. That would be the best case scenario.

Regardless of where the returns policy was stated, 62 percent of the buyers considered it to be relatively convenient without onerous restrictions. The most common restriction was a time restriction, and these were generally between fourteen and thirty days. This could be a problem in some cases where you would be informed of the time restriction, you received the product, later you'd even receive a mailing laying out the terms of the procedure but term

period had already expired.

This happened to one buyer, and some of other restrictions vary by product, so for example some items you can't open them like software, and others need to be in their original packaging. To the cost of returning goods, these can include, typically include the postage to return the item and the postage you originally paid to receive the item. Those are usually the two biggest components that virtually every site charged, and some mail order companies in the United States charge you one way but not both, so generally you'll pay postage both ways.

Some companies required or strongly recommend, and what are you going to do when a company says, "We strongly recommend that you insure the purchase," because what if it doesn't arrive, right, and they said that they recommended that you insure it, right? So it's essentially saying you've got to insure it. Of course there's the time cost to you of returning the item, going to the post office.

Some sites require a restocking fee, which is generally in the 10 to 20 percent range, and generally you lose money both directions with

currency conversion. So you add all those together, plus the delays in getting your credit refund, which is the flow to the company, the cost of sending a good can be very high. One item I would give as an example, I call it the cost of keeping nothing, the cost of having nothing.

To return a software item that cost

So you can end up paying as much to return the good as to buy it in the first place. Another problem I call quick to debit, is it slow to refund. This is a U.S. buyer and he's buying from a Canadian site. An item was ordered on December 12th, debited from the account on December 29th, which is actually relatively slow by comparison in our overall study. The item was shipped back on January 15th to Canada, so that would only be a couple of days. The item was insured and sent by airmail, and it was credited back to the account on April 8th.

So that means the firm had the money for a close to a hundred days. And three items are currently outstanding in the project, in other words since we have not received the refund yet at over a hundred days. We haven't experienced many disputes, but some of the products that we've ordered have not yet been delivered and we're pretty sure they're not going to be delivered.

Some refunds remain uncredited and we don't know if they ever will be credited, and of course later on we may find that personal information was found in a way that we found

inappropriate. So there may be still be additional problems, but if there aren't problems again it won't be very clear what the dispute jurisdiction is. Only about a half of the sites describe it, a dispute resolution procedure at all, and we haven't had any experience yet with charge backs, which is where we had a problem with the good where we said we are not going to pay for this as long as it was sent, a damaged good was sent.

So finally to conclude, what grade should we give electronic commerce as we look cross national borders? I'm a professor, I like to give grades, and we can take pride in the fact that the U.S. sites would get a relatively good grade in this study. Virtually everything I've shown you the U.S. had a higher percentage of disclosure than sites overall, but there are still problems, and one issue is how many problems would be acceptable.

I don't expect a student to get 100 percent on every exam to earn an A. So we have to discuss or we have to think about out of the 150 to 175 purchases, how many problems should you just be willing to accept, and again there's

to correct answer to that, but if we use a few of the following items we can assign a grade. We want to look at how good a job firms are doing in allowing consumers to review the details of their orders, they'd get an A, or an 89 percent overall in the study, higher in the U.S.

Whether information was clear on price and delivery costs, 76 percent, slightly lower grade. Confirmation information, lower still. Security information, lower. Return information on site, 53 percent lower still and very low for information on jurisdiction and third party privacy protections.

Finally, it's very tempting when one hears strong disagreements about issues such as in what jurisdiction should the issue be resolved, should it be the buyer's jurisdiction or the seller's jurisdiction. Foreign issues like who should bear the liability when a credit card is misused, the consumer or the firm. These are polarizing issues. It's very tempting to say well, let's split the difference by making sure that at least the consumer is well informed in advance about what's going on.

Let them choose the site based on the

jurisdiction. If they don't like the jurisdiction they won't shop there. If they don't like the liability policy, they can choose not to shop there, and I can agree with that position in many cases. However, we need to recognize that based on our study we are a long way from providing consumers with the kind of information where they can select sites based on their policies in these various domains, and that should be as Mark pointed out a minimum goal for consumer protection, to give consumers the information they need to select sites based on the quality of their practices on security, delivery, refund policy, jurisdiction and etc. Thank you.

HUGH STEVENSON: Okay, we're going to I think take a break in just a moment. As the professor mentioned, there's also an FTC web study that we did that we're going to talk about this af

(Recess taken at 11:07 a.m. Conference resumed at 11:28 a.m.)

HUGH STEVENSON: I think we're ready to get started again, but before turning to the industry perspective there are a couple of slides I just wanted put up following on the consumer protection discussion that we just had concluded, and these are just a few slides sort of suggestive of the trends we're seeing in terms of consumer complaint data that we receive at the Federal Trade Commission, and the Federal Trade Commission together with National Association of the Trades General and various private and public partners in the United States and Canada has something called Consumer Sentinel, which collects data on consumer problems especially related to consumer fraud, and this first slide states what was probably fairly obvious to a lot of people that there is a significant rise in the number of complaints that we receive that are related in some way to the internet and to internet transactions, and this can cover a whole broad array of different things, but it is a trend that we've seen especially in the past couple of years with the increase in this as the

percentage of what we are see out there and what our partners are there out there.

This is a slide of combined data of the program, various data contributors to that project. The next slide is one that's suggestive in terms of looking at the trend towards cross border transactions and complaints about cross board transactions that we're seeing. The vast majority so far of the cross border complaints we received have been either U.S. consumers about Canadian companies or Canadian consumers about U.S. companies.

A lot of that has been telemarketing and direct mail and lottery related, but we are now starting to see complaints coming from far and wide. The numbers are still small, but the pattern is we believe emerging, and here we see for example foreign consumer complaints that we've received through at our website, we now have a web complaint form where we take complaints and they can be entered by anyone, and we have started to receive complaints from a variety of locations as you can see, and then the next slide is complaints from U.S. consumers about foreign companies, and there's a similar

pattern that we see there in the locations which are now more various than probably we have typically seen before.

There are a couple of other just announcements I'd like to make. First, we'd like to thank Commercenet for breakfast. We really appreciate that, and we'd like to thank Yahoo and Broadcast.com for the web audiocast of this proceeding so that more people can participate. With that -- oh, and we received a question which was could you post the transcript of the proceedings on the web, and indeed we do plan to do that once we've got it so that people can also look at it there. With that we will turn to the industry business perspectives and what it's like to do business in this environment.

We'd really like to thank the industry participants who are joining us and are willing to talk about their experiences and what they have learned from what they've done. Our first speaker is Brad Handler, who's associate general counsel for eBay, and eBay is a company familiar to a lot of people I'm sure here and probably you're aware they've taken a number of initiatives to increase consumer confidence, and

I believe one of our earlier speakers in fact alluded to that and we are very interested to hear their perspective on it.

PRESENTATION BY BRAD HANDLER

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MR. HANDLER: Thanks very much. I'd like to begin by thanking the Federal Trade Commission for posting this workshop and inviting me to speak and give an industry perspective on what we see happening in our trends in particular with consumer protection, and in addition to associate general counsel as my day job I'm also the director of our public policy initiatives and I relish the opportunity to sit here with all of the other folks today and present our information in an informed dialogue to try and make sure that we maintain the United States and our industry as a place where consumers are able to get the best products at the best possible prices with the maximum amount of service.

So with that let me begin. I'm going to start today and go over three basic items. First I'm going to do a little background on eBay and how eBay works, just make sure that everyone is familiar with our model. Then we're going to talk a little bit about consumer protection and how we deal with consumer protection on our site. Then a brief discussion of how if that

doesn't work we facilitate fraud reporting and follow-up through any types of fraud which are perpetrated, and then hopefully leave some time for questions.

So what is eBay? When I started two years ago eBay I would ask that question and I'd say how many people have heard of eBay in the room, and so if my mom was there she would raise her hand and that would be about it. So now when I ask the question how many people have heard of eBay we have a much greater response, so I won't make anybody in the hot room tell me that they've heard of eBay, but I will say that we have enjoyed along with the rest of the internet space tremendous growth in the last couple of years, and with that growth comes added responsibility and with that responsibility comes increased consumer protection initiatives, and that's what we're going to talk about today.

But at its core eBay's mission is as the world's largest person to person trading environment to facilitate trade between individuals, and so one of the things to think about as we explore how one begins to monitor and assess global commerce is to remember that it's

not just businesses selling to consumers. It's consumers that are selling to consumers. Individuals can now be buyers and sellers anywhere in the world at any point in time, and to put a little bit of flavor on that, if you look at our last reports, our last quarterly reports, you see we're on an annual run rate for 2.2 billion dollars worth of gross merchandise commerce, which makes us by far the largest e-commerce site on the net.

So that's a lot of commerce that's done by individuals to individuals. So what are we not? That seems to be easier to describe to folks initially, and we are not an auction merchant. eBay holds no inventory. eBay controls no part of the transaction once the price has been set for the auction mechanism. What eBay does is allow individuals to connect with one another in an efficient marketplace to achieve the best price for the seller and the best price for the buyer, and we do that by minimizing transaction costs and lowering overhead.

The difference between eBay and a website that sells books or CD's or video tapes

is every transaction in the eBay environment is a personal transaction between individuals, and that personal touch often times is what helps people resolve difficulties and issues further on in the transaction. So this is what eBay looks like when you get to the home page, and most people in my company when they give presentations update this slide.

I update this slide once a year. This was last updated last August. If you look in the upper right-hand corner it says there were 620,000 items for sale. I checked it this morning. There were 2.2 million items for sale on eBay, so in ten months that's a four fold increase demonstrating growth that has never before been witnessed on this type of a scale for businesses in the history of commerce.

This type of growth is not unique just to eBay. All of the internet commerce companies are experiencing very similar growth as users adopt and adapt to the benefits that are available to them on-line, but what is the home page tell consumers? It tells consumers if you look in the lower right-hand corner where I use the spotlight, we highlight information about our

individual users that I'll talk about later in something called a feedback format, but you can see that on the home page there's access to information on our site map, there's access to all types of information within a single click, and below the bottom, which is cut off on the slide, you would see that if you went to our actual home page is our user agreement and our privacy policy on the home page along with our trust detail and our BBB On-Line so all of those are available on our home page with easy access for consumers.

We're also a worldwide community. We've recently started both our Canadian and our United Kingdom sites, which are in local currency, they have local content, and they allow searching for local information. This is just the beginning of eBay's planned international roll out where you will begin to see over the next coming month eBay specific sites rolled out in major countries around the world, all of them with the ability to search locally so you can find consumers within your own jurisdiction if you're more comfortable that way, or if you want to search the entire global, if you wanted to

search our entire global database you'll have that availability as well. You'll also be able to search particular countries.

So what does it look like if you're searching for something? We're back into baseball season, so if you wanted to look for a Mark McGwire comic book you would type McGwire and you would find in this particular search that there were over 2,000 items. You would click on the highlighted one in red and you would get a slide like this that gives you the pertinent details about this particular piece.

There's a picture, it tells you who the seller is, who the high bidder is, what the bids are, how many people have bid and where this individual lives, and there's a description. Now, in an on-line world one of the first things that occurred to our founders Pierre Mediar when he was designing this long ago in internet days, not even four years ago, was that in a disintermediated environment where you have individuals in different parts of the country or indeed different parts of the world, how do you know that the person you're dealing with is trustworthy and honest?

How do you build the reputation that you had in small town America when you used to be able to go into the corner store and everyone would know you? And Pierre solved that problem with the feedback form which you'll see on the very next page which you get by clicking on the number 899 or the number next to any seller. This feedback is feedback that is listed from individuals who have dealt with this particular seller, and it lists their impression of the transaction with that individual.

So this reputational feedback system travels with this user wherever they go throughout the system, and this is a very critical piece in determining whether or not you want to deal with someone on the site. It builds your reputation. So people ask how then as an internet company do you make money, because we were the first profitable internet company and still one of the only profitable internet companies.

It's a very simple fee structure based here in U.S. dollars, it's a simple fee to list your item below the two dollars, usually 25 cents, and then the transaction fee is based on

the final price of the item. Consumer protection, with this vast amount of commerce that's going through our site and 2.2 million items that are on the site for three, five, or seven days, so if you go next week and look at the site there will 2.2 or 2.3 millions and they're all brand new items.

So with this vast number of transactions, how do we insure that the commerce that takes place between individuals is good commerce and not bad commerce, that people on both ends of the transaction are happy, and we do that through our consumer protection initiatives that I'm going to discuss briefly. Safe Harbor, which is our baseline consumer protection initiative, there's the feedback forum which I just discussed, our privacy policy, and then through an abundance of third party services including escrow authentication insurance and identify verification.

Safe Harbor. Safe Harbor is our jumping point to all of the consumer protection information within the eBay site. Safe Harbor is a dedicated team of customer support professionals that are available 24 hours a day,

seven days a week to address complaints and issues that consumers have, either issues with eBay specifically or issues with other sellers or how to use the site.

The feedback forum which I just discussed hears information about how do we feedback, what the little colors mean on the side which I get asked often, and also how to link your feedback to a particular transaction, because that's a real critical piece of making the feedback forum valuable is making sure that the people that leave those comments were actually engaged in a transaction with the other party, and you see that through a linkage on each and every feedback profile that's left.

If it was involved in a transaction if you click on the number next to it you'll see the actual good or service that somebody purchased. Next is our privacy policies, and now I understand there is an entire session dedicated to that. Let me briefly tell you what we have evolved here in privacy, because a lot of people lose sight of the fact that there is a fine line between privacy and anonymity on the one hand and fraud prevention on other. They are mutual

exclusive. You cannot have complete anonymity and maintain a one hundred percent fraud free site. It's impossible to do.

after those individuals through legal remedies to try and resolve those issues on behalf of our members.

Now, I've put this slide in here and I think that it was funny that the gentleman from Lycos was talking about all of the boiler plate legalese that goes up on these sites that he doesn't believe anyone is going to read. I won't comment on how Lycos views the information that they put up on their site, but I can tell you that when I wrote our privacy policy, a large concern for me was whether or not people would understand it, and what I did and I've already mentioned my mom in the speech once, so if she's watching on the net, hi Mom, I sent my mom our privacy policy, and she sent it back to me and said, "Well, I kind of understand it but could you make it a little bit simpler?"

So we did it again and I sent it back to her and she said, "It seems to me you're collecting an awful lot of information. Why don't you just tell me what information you collect and who has access to it," and there's my mom's chart, which is part of our concept for privacy, so you can see exactly who has access to

all of the information we collect in an easy to read graphical format that was an innovation driven by what our users, namely in this instance my mom, and those are the types of innovations which we're free to do here.

Sadly I've already been told by some of our local counsel in Europe that this is not an appropriate way to display the treat we put up our privacy information and we have to change it in certain countries. I personally find that a little bit disturbing. I won't comment on how my mom feels. Escrow, we find escrow to be a very important means of insuring transactions that are greater than \$200, and so what we've done is we've integrated a third party named I-Escrow, and we have created links back and forth that populate information on transactions over \$200 so individuals can easily use the system.

The reason we do it at over \$200 is because we provide no cost insurance which I'll

Why? Because in the state in which I-Escrow was incorporated they had escrow laws on the books which had not been updated that required physical signatures that required what were called good funds, in other words no credit cards.

So they weren't able to get a license in the state in which they were domiciled, which made them an illegal escrow operator if actually turned the switch on, and so to get around that problem they had to reincorporate and move to another state while we tried to fix regulations which didn't anticipate how quickly and fast the internet changes and how the business dynamic is no longer the same business reality of the 1930's, 40's and 50's.

So as in this conversation and throughout the rest of today people begin to think about whether or not regulation is the way to move. I'd like everyone to think about I-Escrow and the trouble that I-Escrow had becoming our partner in order to get licensed in that state, because for a year we were unable to integrate this very important consumer protection into our site based on regulatory schemes.

Authentication. How do you know that

what you're buying is what somebody says it is, and so we've entered into a number of partnerships with third party providers who for a small fee will authenticate items that are up for auction. Authentication is an increasingly important avenue for larger priced goods, and we find it to be extremely valuable and we believe that our users do as well. It's important to realize that is not authentication of an end user, which I'm going to talk about in a little bit.

Next we have insurance. eBay being the innovator and the creator of on-line person to person auctions was faced with an issue, how do we make people realize that engaging in transactions in an environment where you don't know either party is safe, and we did that by being the first company to introduce no cost insurance, and insurance that we now carry for any eBay transaction is at no cost to buyer or seller. Each transaction is insured at \$200 with a \$25 deductible. We are now able to offer this insurance for all of our consumers worldwide, and one interesting note is that since we were the innovator in this and we had to go out and find a

company that was willing to take the risk of insuring, they came and looked through all of our records of all of our reported transactions that had gone bad and all of our fraud that had been reported, and they measured it against what they see in other industries, and we were able to find an insurer, Lloyd's of London, that was willing to take that risk, so this is not a company that is new to the field of risk. We have done an awful lot of study, and as I think other people will talk about later in the presentations, on-line commerce is an incredibly safe way to trade.

Identity verification. How do you know

And what we do is we ask additional questions based on this person's credit history or credit profile through a series of multiple choice questions, and if they get the questions right then they get the verified seal, so you have a better sense that this person is who they really say they are. An interesting note like I talked about earlier about our inability to provide certain things like a privacy appendix as being compliant in the field, is we're learning now that we are unable to provide this service at this time to anyone outside the United States because of the privacy laws in other countries which forbid this type of use, which is a benefit for consumers but yet we are not allowed to add this in our arsenal of weapons to prevent fraud to consumers outside the United States.

So that's what we do on the front line. What happens when there is a bad transaction and someone is defrauded? We have several items that we go through and the most useful is our fraud complaint form which is the link into our insurance. It's a process where a user initiates a complaint. They do that by filling out a form that I'll show you in a

second. The form helps distinguish through a series of AI questions exactly what went wrong in the transaction and provides the consumer with information tailored to the type of bad transaction that they were in.

An e-mail is sent to both parties, a confirming one to the person who lodged the complaint and one to the person who the complaint has been lodged against. This on-line communication facilitates communication between users because we see an astounding number of initiated complaints resolved by the time that communication gets going again between the parties, and there is a 30-day cooling off period to make sure that the parties have an opportunity to try and work it out, and if that doesn't resolve the problem then the claim is filed with Lloyd's.

In addition we have been working with a third party mediation service on a trial basis which has also helped significantly in defusing a lot of bad transactions, because in the end unless someone is really intent on being a bad actor, we can normally clear up almost every single complaint that comes through. This is

what the system looks like. I understand that you guys can't actually see it, but it's there.

You file a complaint or view a complaint, and then this is the beginning of the AI system where you can see how there are a series of questions that are asked, and then at the end you end up getting a claim number, and that claim number is your guide to coming back on-line and finding out if there's been a response from the party who the complaint was lodged against, and it's also your key to the Lloyd's of London claims process, so it's very important that folks finish the system and we give people an awful lot of information on that, and now I would throw it over to Hugh for questions.

HUGH STEVENSON: Thank you very much. Our next speaker is Peter Harter. I'm not sure though if he's here.

MR. HANDLER: He's not here.

HUGH STEVENSON: He's not here, okay. Then we'll go to Charles Prescott, who is vice president of international business development

businesses of varying sizes involved in various kinds of lines of business, and he is here to offer that perspective.

PRESENTATION BY CHARLES PRESCOTT

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MR. PRESCOTT: Thank you. I think I should start by remarking how eBay has changed the meaning of the word "Mom & Pop Shop" significantly. The DMA is the world's largest association of direct and interactive marketing

learn not to put black type on a blue background.

That is a quotation from Seth Gode, the founder of Yoyo-Di, who has referred to the internet as direct marketing on steroids. It is our view that for direct marketing, and especially electronic commerce to thrive either domestically or globally there must be three things. Ease of use, let's carry on, ubiquity, and trust. Now, ease of use, which you can't see, and ubiquity, which you can't see, are technological and economic issues, and the last, trust, is the result of a complex interplay of consumer experience and business confidence and industry development.

There is no software for that, and for global electronic commerce to thrive that trust must be shared by consumers and my own experience has shown me and I will share with you anecdotally businesses. We believe good business will thrive with direct marketing techniques by doing well, what is good for the consumer is good for business because maintenance for the long-term relationship produces the most value for both parties.

Now, direct marketing in any medium, be it mail, television, radio, or electronic commerce is a discipline of numbers and results. It is intensely experiential and fact based, which is why I was absolutely fascinated by Professor Mayer's presentation. Facts are critical to us. Direct marketers generally find that people do not do what they say they do. People do what they do, and the discipline of direct marketing is based on that simple truth.

Our recent survey of our membership's involvement in electronic commerce and our research department's review of other data has provided us some food for thought and I'd like to share some of that information with you. For example, a recent survey of 2,400 internet users

this is but 1 percent of retail trade in America, but it is growing and we all see the trend.

Another example, our electronic media survey of our membership was conducted in January of this year, a big year, and discovered the following. 95 percent of our members maintain websites, up from 87 percent last year. 52 percent conduct sales at the those sites, up from 43 percent the year before, and 49 percent of those conducting sales are doing so profitably.

Of those websites were 43 percent who did not conduct sales, they use those predominantly to generate marketing leads and for branding purposes. In addition we discovered that 51 percent of the respondents conduct business with domestic customers only. Be they B to B or B to C. 46 percent do business domestically and internationally, again primarily B to B and also B to C.

There is twice as much electronic commerce in the business to business field as business to commerce, business to consumer 10 percent on median versus 5 percent on median, and the top markets cited for both business to

UK, Europe generally, and then Japan, and 11 percent of our members will not accept orders internationally on their websites where they accept orders.

In all honesty we don't know the reasons why for any of these numbers. We can guess. The number of Americans purchasing on-line would suggest but not prove that the trust and security issues appear to be receding in importance. The business to business number is most explainable. There are more computers in the business to business environment, it has been more quickly accepted, and many companies are moving by company policy to dealing with their business customers in that medium.

The markets are understandable, that is where the economic activity is. Of course we're here to talk about consumer protection and trust, and the DMA has worked and will continue to work to help further build trust and to foster the best practices in the industry. We have been a leader in development of self-regulatory programs, many of which we are adapting for electronic commerce and many of which are being both adopted and adapted by other DMA's around

the world.

For example, our consumer line program, previously called the Mail Order Action Line, provides a means for consumers to elicit our help in resolving their difficulties with distant selling companies. This has been duplicated in the UK, Germany and Japan and elsewhere. We are now establishing a mechanism through the International Federation of Direct Marketing Associations, which is an association of thirty national direct marketing associations to provide the same service across borders.

While the program cannot prevent fraud it does provide a detection device, and we commit ourselves through the associations to refer evidence of fraud to our local enforcement authorities, and it does result in resolving numerous common customer service problems which often result as noted from misunderstandings, language difficulties, and inevitably system failures because direct marketing and fulfillment involve many, many different kinds of systems, and any link can break.

Building on our experience with our mail preference and telephone preference

services, both of which we now offer on the international basis where the data protection commissioners in Europe will cooperate, we are

conversations with industry members over the last few months in the U.S., Europe, and South America, I travel quite a bit, and from those conversations I've drawn a few tentative conclusions, and I admit in all humility that these are anecdotal and I present them as such.

First, brands matter. Well known brands with reputations of reliability are doing very well on the web. Trust in this company does count. Second, growth of e-commerce around the world as noted elsewhere is hindered more by lack of infrastructure. Telephones, personal computer penetrations, credit card and other payment mechanism adaptations and direct marketing skills than by any other reason. For example, Brazil has 61 telephones per 1,000 population. The United States has 700, in excess of 700 telephones per 1,000 population.

The average income of the Brazilian resident is about the price of a personal computer in the United States, the average annual income. Costs are a significant problem. An hour of internet connection time in Germany costs about \$4, in Brazil \$21, and these prices vary widely around the world, although they are coming

down in countries where the telephone systems have been modernized.

Now, leaving aside products that can be digitally delivered, the backbone of the process are packaging and delivering physical products internationally is daunting, and Professor Mayer's survey has uncovered a few of those. This discourages e-commerce and especially international e-commerce in the same way it discourages international direct marketing commerce.

A frequent remark I hear from my members here in the U.S. is that, "We want to get the system working here first. Then we'll battle the international logistics." So while direct marketers may venture on-line with logistical systems in place, and they have an advantage over businesses lacking those skills, both are equally disadvantaged when attempting to deliver products abroad. There are for example what I call nontrade barriers. For the most part I don't mean those in the World Trade Organization sense, but there are obstacles to direct marketers who are reluctant to venture into the multinational environment, off-line or on-line.

A few examples are restrictions on promotional devices such as rebates or discounts or premiums or gifts, promotional devices such as sweepstakes. I will not touch on that. If you stumble on one of these in say Germany or Switzerland or Japan or Scandinavia, you can expose yourself to significant lawsuits from government, competitors, and consumers. Second, customs forms and duties in value added tax levies, with respect to customs and duties the failure to observe formalities can delay or even prevent delivery, and I'm wondering if that was not a factor in Professor Mayer's study.

Often you completely lose the product. I just suffered this in Brazil where four of six boxes with materials I was sending to a direct marketing conference arrive, the other two did not, will not be sent back to me. They must either be cleared or be destroyed. The problem was there a wrong form on one box and an incorrect value to high value was put on the other box. There is no way to resolve that at a distance and I must hire a local customs broker at a fee that makes it unrealistic to resolve.

Duties and VAT levies are often

incredibly difficult and time consuming to determine. They're sometimes changed without notice. They're not published clearly, and transparently. Even large multinationals who import and export materials around the world on a daily basis find this subject an extremely costly and vexing one, and they have very often large staffs devoted to dealing with these issues.

How you classify a wristwatch that is digital, analog, plastic strap, leather strap, you name it, will determine the duty on that item, and that's just a wristwatch. Small companies must indeed indeed rely on the goodwill of their customers overseas in their knowledge that they have to pay these fees. It would be I think a great disincentive for e-commerce growth to put the calculation or collection responsibilities for these on a marketer, especially a small marketer unless some sort of technological fix can be found.

Most experienced consumers in an international environment who deal internationally and who have perhaps traveled abroad know that they have some of these responsibilities and we know this from our

American members who marketed to Canada where Canadian customers are quite accustomed to having to pay a provisional sales tax on delivery of a package from the United States.

There are product restrictions from

huge cultural differences that are a marketing, challenge but they sometimes result in changes that could be called consumer protection issues.

You noted that in Scandinavia and Germany COD was a common payment mechanism and that's fostered by the postal systems who actually carry and exploit with their general

litigation in Germany where its lifetime guarantee of a product has been challenged under German anticompetition law.

That knowledge has frustrated some marketers here who would like to sell into

prettily litigious places.

I will tell you that in Germany and the Netherlands consumers are very, very quick to go to quite user friendly courts. Now, from all this I would suggest there are a number of conclusions and these are for consideration and discussion. I think business accepts that the off-line rules such as Section 5 of the FTC Act and the Mail Order Rule apply on-line, and that they apply to international orders if you're doing business here in the United States.

For substantive law purposes it seems to me the starting point should be for discussion that there should be no discrimination among the media, telephone, mail, and electronic commerce. Business and government are still learning about this. We all know that. New and different best practices are developing and will continue to develop. We have seen that demonstrated with eBay.

Attempts to dictate particular practices in this medium I do not think will be very protective, but they could restrict to mutually beneficial experimentation. For example, a three click rule for contracting has

been suggested. We have one member who employs a six click rule to confirm to place, to confirm this, to confirm that, by the way aren't you sure, are you sure that you weren't thinking of this particular product, no, look here, all the way down to by the way, if you click again the deal is done, if you don't want it hit the back bar and so on and so forth.

He's finding some consumer reluctance to deal with that. He gets e-mails objecting to the lengthy process. At some point who knows, the market may fixate two or one or even eight clicks, and we need to let that work itself out. So dictating various access to the contracting practice will hinder that ability to consumers to signal to sellers what is optimal.

Business associations are working more quickly than ever before to formulate international self-regulatory programs and trust building and protection delivery programs. These like the internet as a commercial medium are still a work in progress and will be for some time. The ICC is very active in this area. The Confederation of British Industry, the UK Direct Marketing Association, many associations around

the world, including Japan, Japan Direct Marketing Association and UP are promulgating consumer protection rules for the on-line world, it's very interesting.

History should not be forgotten. Ten years ago 80 to 90 percent of all catalog orders were sent in by mail. Now, part, not all of that, was concern about revealing your credit card number over the phone, and another aspect in there was toll free numbers became more popular, but nevertheless there was a security concern. Now in many major companies 90 percent of their orders are taken over the telephone and consumers willingly tell companies their credit card numbers.

They not only tell them their credit card numbers. Consumers now expect companies that they deal with regularly to know their credit card numbers and sometimes get a bit testy if you ask them for it again. You have to explain you don't keep it on file for to protect you, and some customers say don't protect me, keep it on file, I want to save time. Finally, subjecting companies to a diversity of national jurisdictions through something like a country of

destination rule as under the Rome Convention may not protect consumers.

Its greater result may be to discourage the development of international choices for consumers as websites refuse to accept foreign orders. Also my experience as a legal aid lawyer some years ago and nine years I spent as a small claims court arbitrator in New York City showed me that it is the rare consumer who has the patience and time to get a small claims court judgment issued in Brooklyn enforced even in the Bronx.

Forget Buffalo, and Berlin is absolutely out of the question. So creating causes of action for things like this in foreign jurisdictions may not get us very far. It may make us feel better, but I don't think it will provide real effective relief. Finally, I think consumer education campaigns, meetings like this, international cooperation and fact sharing among business and consumer groups and government authorities can only be fruitful. Caution is desirable for we are all on a frontier here. We should be cognizant that we're building a foundation and we hope it will enhance the

landscape and not scar it permanently. Thank you.

HUGH STEVENSON: Thank you very much for that presentation. We are about ready to move on to the law enforcement perspective. Since we're doing reasonably well for time I wondered if any of the panel participants here had any questions for each other or if the commissioners had any questions, we might take those at this time. If you can just turn your head sideways, actually Commissioner Thompson has a question.

COMMISSIONER THOMPSON: Sure. I'm just wondering from not only from folks we just heard from but some people we heard from earlier this morning, to what extent are you encouraging or seeing a greater consumer interest in alternative dispute resolution mechanisms?

HUGH STEVENSON: Brad, do you have a --

BRAD HANDLER: I can tell you, Commissioner, that for eBay we have vested interest in making sure that all of the transactions which take place on our site are happy transactions for both parties and as such we instituted a pilot program for mediation and

dispute resolution this spring, and the person in charge of that actually will be presenting later. I don't know what kind of statistics he'll give you, but I can tell you that from our side it was incredibly useful for the people that used that mechanism because it gave individual buyers and sellers an independent third party to listen to what their problem was, because it doesn't do us, eBay, any good to try and mediate a dispute because the buyer and the seller both think you're taking the other person's side, so I think that an independent third party dispute mechanism is a solution to that.

CHARLES PRESCOTT: We have a particular exchange with that, although our consumer line is a form of alternate dispute resolution, it needs to be better known and more widely used. Many disagreements if you will or complaints by consumers against our members tend to result from misunderstanding and communication breakdown. Sometimes systems failure or we're very sorry, the guy who handles that is on vacation for two weeks, and the consumer is rightly concerned about that.

In this environment, I'd like to

suggest that one needs to take a look at consumer protection mechanisms in Europe. When you talk about alternative dispute resolution, in many European countries the consumer ombudsman, for example in Scandinavia or the other government agencies in other countries take what I would call a more sort of retail activity on behalf of consumers on the individual cases because they have the staffs and the budgets in the countries that are smaller.

In France, the DGCC, which is the, I can't help but remember the French name, consumer or something like that, will actually handle specific complaints from consumers against a specific company. They will send an officer over to the company to resolve it. The UK of course has legal services publicly funded, and consumer groups in Germany have standing to file actions on behalf of particular consumers. So those might be viewed from an American perspective as alternate dispute resolution mechanisms, but they really aren't. They're a different structure on that.

COMMISSIONER THOMPSON: I'm just wondering, Professor Mayer, that in your study

did you run across any or did you have something you were specifically looking for?

ROBERT: MAYER: Well, we are looking for it but we haven't really gotten far in terms of these transactions. The ones most likely to leave that to that kind of dispute we're still waiting to see if the item gets delivered. In any event, we'll probably have, you know, less than ten, we'll definitely have less than ten such situations. More like three or four.

HUGH STEVENSON: Okay, with that why don't we turn to the law enforcement perspective, and to the law enforcement perspective there are two things that are new to consumer protection law, and of course we know both the advent of the internet the past few years has introduced new challenges and the advent of international transactions which has given us a whole series of challenges as well.

Our first speaker is Sally Gustafson, who the senior assistant attorney general and the chief of the consumer protection division for the Washington State Attorney General's Office, and her office has been involved already both in internet related matters and in cross border

enforcement, and so she can offer us the perspective for the experiences that they have had in this area

PRESENTATION BY SALLY GUSTAFSON

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MS. GUSTAFSON: Thank you very much.
I'd always like to thank the FTC for hosting this
conference. I think it's going to be very
mutual, and for including the state's attorney
general and our position and our perspective on

jurisdiction if they are trying to be hailed into that state for law enforcement purposes. They claim sometimes that they are not subject to the laws of the jurisdiction of the buyer, and frequently of course they will seek jurisdictions which operate where the protections or consumer protection are much less, and there is much less protection even under the laws of which they are operating.

And by doing that they can avoid any effective remedies. We have found that from a law enforcement perspective if we do file a case say in the state of Washington against a company that may be operating out of Canada, that there are, we can get a judgement against that company, but it's basically an empty judgment if these people are operating outside the United States. We might even get a judgment for money that requires the company to pay the money, but again if we don't have any mechanism to pursue that person in their bank accounts from another country, that is pretty much sometimes just laughed at and it's not effective.

And also our injunctions are pretty much worthless. The company can keep doing what

they're doing just as long as they want to do it. Sometimes we can keep them out of our state but then they would go into another state or they just keep operating until the local authorities get an eye of them and then they just shut down and disappear.

So we have faced this problem in Washington state like many of the other states' attorney generals have, and although we're thinking globally here and I think that's a very, very good idea in order to plan for better enforcement, what we found is that what really works is to act locally, and that's what we have been doing and pursuing. What we have done is tried to get a coordinated effort between the countries where these scam operators operate and the FTC and the states' attorney generals to pursue effective law enforcement against these scam operators and fraud artists.

For example, this really does work. I would like to use as an example what we've been doing in the area of cross border fraud with Canada. As a border state we've been very interested in the fact that a lot of these some fraudulent operators were operating out of

Canada. You may recall those of you who have followed telemarketing problems and fraudulent telemarketing that when the Telemarketing Sales Rule was enacted several years ago and U.S. enforcement against fraudulent telemarketing increased greatly, a lot of the fraudulent telemarketers sort of picked up stakes and moved on, and they left Nevada, Georgia, New York, wherever else they were, and moved to Canada, and lot of them we found were operating out of British Columbia.

I think a great number of them are in British Columbia, also in Toronto and Montreal, and it's not unlike some internet operators, they were using the border as a shield against the effective law enforcement that was ongoing in the United States. The types of scams that we saw up there that were victimizing U.S. citizens were advanced fee loan scams, credit repair problems, high profit investment scams, prize promotions, telefunding, travel schemes, recovery rooms where I don't know if you folks are aware, but when people lose money to fraudulent telemarketers there are companies that set up to call these people and say we can get your money back that

you lost to the telemarketers. All you have to do is pay us \$500 and we'll get your money back.

Well, then they got them twice because they lose their \$500 as well as the original money that they lost, and we also saw a great increase and a focus on foreign lottery sellers. These are people who located in Canada and are and are still operating up there, many of them. A couple of months ago we heard from the Canadians that they estimate that there are over 160 foreign lottery sellers in British Columbia alone, and what these people would do would be market both through the internet and by telephone, traditional telemarketing, to people outside of Canada and offer to them purchase of foreign lottery tickets, and this in the United States and the state of Washington specifically it's illegal to do that, but of course there were people who were targeted, often older people, people who were the traditional targets of telemarketing fraud that were lonely and were easily taken in by of the promises and promotions that were given to them by these people and a great deal of money is being lost to these foreign lottery sellers.

Often times there isn't a lottery. Sometimes there is a lottery, say an Australian lottery where tickets are being sold and people are told that they have a better chance of winning if they buy through these people, and then frequently also the tickets are never even purchased on these foreign lotteries. It's just a complete scam. So we in the state of Washington and the Washington state's attorney general's office recognized an obligation as a border state and as a victim state, there were many victims in the state of Washington as well as all over the United States that we really wanted to do something about this, but of course again we got back to the problem of the border was being used as an effective shield against law enforcement.

In June of 1997 President Clinton met with the prime minister of Canada and decided that this was going to be a priority for law enforcement and Washington was one of the two states that stepped up to try to help effect some of the more, some law enforcement that was really going to work against these people, and how we did that was by forming a task force. We met

with the Canadians in Vancouver -- excuse me, it was in Victoria. Great trip up there, June of 1997, and we met with their director of trade practices, the RCMP, the Vancouver police department, and the ministry of the attorney general for the Province of British Columbia, and it was representatives from my office, the attorney general's office, and from the FTC, the local regional office in Seattle went to Victoria to meet with these folks.

We talked about some of the problems that we had encountered in trying to stop these telemarketers, and quite frankly before this I don't think the Canadians had actually focused on this as a real problem, because most of the victimization had been occurring in the United States, not the Canada, and here were people that owned businesses in Canada and employed people and paid the bills and the Canadians initially I admit well, what's wrong with this, but after some publicity and some interest by the Canadians and by us and by the FTC, it was very clear that we were going to have to have a coordinated effort in order to stop this activity and that it was hurting the Canadian economy and the image of

Canadians in the world by allowing this to happen, and they were extremely cooperative and interested in working with us.

Also coincidentally at that time there were some criminal cases that had been filed out of Western District of Washington against foreign lottery sellers, and they were running into some problems. There were problems with getting information out of Canada over the MLAC process, which I think Eileen is going to talk a little bit about. There were extradition problems. There were all kinds of issues and some adverse rulings in Canada regarding the criminal pursuit, so we decided that it was going to be better to go after these folks civilly.

What we did as I said is form a task force, and in 1997 we pursued our first case against a foreign lottery seller in Canada and we worked very closely with Canada in doing this, and our plan was to file cases both in Canada and in the United States simultaneously, and that way we could coordinate efforts in both countries and have the most effective enforcement. We went up to Canada, we planned this all out, we filed a complaint in the United States and got an

injunction against their operating in the state of Washington.

Then we went to Canada and assisted the Canadians in searching about nine different sites, the homes, the offices, freezing bank accounts in Canada, and froze approximately six million dollars of the telemarketers' money in bank accounts and in assets in Canada. This was really great. It was wonderful. We closed them down, and all of a sudden they were starting to talk about how much money do you want to give back to consumers, what can we do for you, we'll close down operations, and this is of course exactly what we wanted.

We were also concerned of course about returning money to consumers. Our part of the deal with the Canadians was that we would help with the witnesses. It was very difficult for the Canadians to bring people to Canada from the United States. It was hard to locate them, hard to interview them, and that was what we were going to do and what we did do is locate witnesses and assure the Canadians that we would facilitate they're going to Canada and being available for the prosecution in British

Columbia.

So we really we had a coordinated effort and I think that the defendants were pretty intimidated by that and they did settle the case. Even Canada got their share off the top which made them ultimately very happy. Apparently these folks had not been paying their taxes up there, so we made everyone happy I think and this closed the operation down and returned about half a million dollars to consumers in the United States.

We have continued on this enforcement effort. We filed additional cases in 1998 in conjunction with state of Arizona, and of course also I failed to mention and I apologize, the FTC did file a case at the same time, the first one also, and they have been very intricately involved in the enforcement effort and making sure that this works on all sides and have been filing also their own cases to enhance this effort and make sure we get restitution universally for all U.S. consumers.

It is now, the project is now called Project Emptor by the Canadians and I understand that it is the only civil enforcement task force

which is international of its kind operating right now. In any event, I do want to stress that there is a role for state enforcement in these kinds of issues, whether they involve companies in other countries that are operating through the internet or through the telephones or however they're operating, because they do use the border as a shield.

These are cases where jurisdiction is a question, where there's question as to which law applies, and there are problems, very serious problems with remedies and effectiveness of those remedies. The states can act very quickly. We can get in there fast. We have access to victims, we can get interviews, we can do the, gather the complaints, we can find and pursue injunctions that will prohibit practice in certain locations. Also the states are very responsive to local consumers.

There are local customs, there are local operating interests that different states have, and although perhaps a consistent law is advisable in dealing with many of these operations, it's also important that the states are empowered to find specific protection for

their own consumers as they see fit. We have also done this in the state of Washington by passing a bill which prohibits certain sending of unsolicited commercial e-mail, spam, if it has a false header or an incorrect subject line, and we're one of the first states in the nation who has done that and we're finding that it's very successful not only because we're pursuing public actions by our office, but also it creates a private cause of action for people who just don't like getting spam, and they can sue these people who send them unsolicited commercial e-mail under our state if they are Washington consumers receiving e-mail in the state of Washington.

Also the states can be a model for future federal legislation. We have testified in subcommittees in Congress about our spam legislation and I know that there is some interest in pursuing a similar type of bill at the federal level. We can look at how these statutes are working in the states and what works and use that, and if it doesn't work to try to modify it to make it better.

And most importantly, the states can cooperate with others to make an effective law

enforcement team, and we have done that and our cross border telemarketing fraud and Project Emptor and our work with other countries, Canada and the FTC, has been very effective to pursue and stop these fraudulent operators. Thank you.

HUGH STEVENSON: Thank you, Sally. We turn next to Eileen Harrington from the Federal Trade Commission. She's the associate director of the division of marketing practices, the division of marketing practices has addressed consumer fraud in many forms, mail fraud and telemarketing fraud and pay per call fraud and it's turning to internet fraud in its various guises and including a number of cases which add an international component to it

PRESENTATION BY EILEEN HARRINGTON

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EILEEN HARRINGTON: Thank you, Hugh. I want to pay you a special thanks for putting me on the schedule at the end of the long morning so that I'm now in the position of sitting between you and lunch so that I can return the kindness sometime soon. I think that Sally has done an excellent job of summarizing the experience that we've had in working the telemarketing fraud problem across the United States-Canadian border and there is much to be learned from that.

I want to turn to a different example to illustrate some of the challenges that law enforcement faces in the new age of global e-commerce, and that example comes from a case that the FTC filed just a couple of weeks ago. I guess it's our version of just in time delivery for this conference, but the case was one of 83 that the commission has brought to date to challenge deceptive and fraudulent marketing and advertising practices involving the internet.

Most of those cases I would add have been brought in the last two and half years, although our first internet fraud case was

brought five years ago. The case that I'm going to describe to you was developed by the FTC's staff using data from the Consumer Sentinel database that Hugh referred to at the beginning

It's again an organization of consumer protection law enforcement officials across borders. We have many good examples to draw from and to form I think useful strategies to try to

given situation faced by law enforcement. Let me tell you a little bit about the facts of this case. We have at the FTC an internet fraud rapid response team that daily checks the data coming in to Consumer Sentinel to see whether there are new and troublesome frauds on the internet that consumers are complaining of.

Our internet fraud rapid response team picked up a complaint that came in late in April. That complaint was actually piece of unsolicited commercial e-mail that was forwarded to us by a consumer, spam. The consumer received spam that said something like the following: We've received your order, your confirmation number is XYZ 224, your credit card will be charged \$395. If you have any questions call 767-425-2424.

Now, we heard from Professor Mayer that 80 percent of U.S. sites that were surveyed in his study or some 80 percent use e-mail to confirm orders. Well, for the consumers who received this particular e-mail, it was difficult for them to know whether this was an e-mail confirming some order that they had forgotten about or that one of their kids had placed or

what, but the consequences were immediate, that is your credit card was about to be charged \$395, and so the consumer we heard from and other consumers with whom we later spoke set about to find out what this was about.

They hit reply and the answer when they hit reply was that there was an error code. The party who sent the spam was disguising its identify by using false header and source information and so there was no way for the consumer who got this spam in their e-mail box to reply. So the only other alternative was to call the telephone number, 767-da da da da da da. What happened when people called that number to find out about their order? They were connected to an adult entertainment audio program.

Now, some consumers heard that and thought I must have dialed the wrong number and dialed again and got the adult entertainment program one more time. Why were consumers connected to this number? Well, the whole scheme was a ruse to get people to dial an international audio text pay per call line. In this case the telephone number terminated in Dominica, the Caribbean West Indies nation.

When we received this first spam the team checked the database and we found we had similar complaints from other consumers, and we felt well, we need to find out who's sending this spam. We tried unsuccessfully to learn the identify of the spam. Almost all of the consumer complaints that we had received were from consumers who used the same ISP, so we thought okay, we'll send a subpoena to the ISP and see if they can help us out.

Well, the answer there was there are Electronic Privacy Act issues, so we're not really sure whether you have a right to subpoena the information that you seek. Moreover, we have 20,000 complaints about this same outfit, so even if we were to comply with your subpoena we can't really comply fully because it will cost us a lot of money to turn over these 20,000 complaints that we've received, but gee, we'd like to try to help you somehow, so let's informally and formally provide you with responsive information.

That was our first challenge or hurdle in the investigation, that is even when we went to a domestic source to find information, we ran

into some hurdles. Then we decided that we needed to trace the telephone number, 767-425-2424, and see what the deal was on that. So we did that, we were able to learn the identify of the common carrier, the common carrier serving the country of Dominica, and that is about all that we were able to learn.

We sent a subpoena out to the phone company in Dominica and it replied that it didn't have to honor our subpoena because number one they're outside of the United States, and number two they're a common carrier and the Federal Trade Commission Act seemed to exclude common carriers from the commission's jurisdiction. However, the phone company said they would be glad to try to provide us with some information but not really what our subpoena sought in its entirety.

We were able to learn in our investigation how the money was being collected for the scheme. We knew that the money, we learned that the money was being collected by the telephone company that sent the bills out to the consumers who were duped into calling this telephone number, and we have a fair amount of

experience here at the FTC with the telephone billing and collection system and so that part of our investigation was pretty easy. We were able to figure out quickly where the pressure points were in the collection system, and our commission made a decision to go ahead and bring an action to stop this scheme, even though we were not able to identify it before we filed the case the identity of the party or parties who were sending out this fraudulent, deceptive, unsolicited commercial e-mail.

The commission filed the case in federal court in North Carolina about two and a half weeks ago and obtained an immediate order freezing the funds in the telephone billing and collection system so at least the parties who are the beneficiaries of this scheme will not receive the money that is still in the system. The defendant in this case, or the defendants, that is those who sent the spam, are still unknown, but let me tell you what we've learned so far in discovery.

We know who all the players are now from our discovery except the identity of the person or persons who sent the spam. We have

deposed at least one person who sent spam, but not the spam that we have, and that person got involved in this scheme by replying to a banner ad that he saw when he was on a very popular site on the internet. The banner ad when he clicked into it recruited him to make money in the international audio text business, and our discovery has informed us just exactly how it was that this person at least made his money.

Here's how the money flowed. For every dollar collected by the phone company that sends out the phone bill to the consumer who is duped into placing this call, 33 cents of that dollar was sent to an agent in Gibraltar. The agent in Gibraltar, who is apparently the person who has leased these phone lines from the telephone company in Dominica, the agent in Gibraltar keeps a penny and sends 32 cents on to the service bureau.

The service bureau is a company here in the United States that assists the information provider in running this business. The information, the service bureau keeps 9 cents of that 33 cents and forwards the remaining 23 cents to the information provider. The information

provider is the company in this case who ran the banner ad on the internet recruiting our spammer into the scheme. The information provider keeps 3 cents out of this 33 cents and forwards the last 20 cents to the spammer.

Now, that's how the money flows. So there are a lot of actors here. The rest of the money, 67 cents out of the dollar, goes to the telephone companies that are involved in transmitting the call. Now, we've also learned both through our discovery and through a workshop that we held here at the FTC just ten days ago to talk about proposed amendments to the commission's 900 number pay per call rule, we learned from discussions about this case at that workshop that the telephone companies, who I think we would all agree are certainly the most, should be the most trustworthy entities in this scheme, the telephone companies do not talk to each other at all.

The domestic phone companies don't communicate with one another and the international telephone phone company that is involved in making 67 cents on the dollar off of this scheme, the international telephone phone

company doesn't talk to the domestic phone company. So what we learned from all of the phone companies sitting around a rule making workshop table in this room about ten days ago is that the international telephone company involved in this scheme actually cut this number off in March.

That is it stopped terminating calls for this phone number, but they didn't tell any of the phone companies in the United States that they had cut the company. They cut the number off because they got some complaints from the United States embassy located in Dominica about this phone number, and so they thought well, we'll just turn it off. They didn't investigate the complaints. They just turned it off, and they didn't tell any of the phone companies in the United States about that, so those phone companies were still billing and collecting and trying to get people to pay for these phone calls.

Now, this case is still in litigation, so I don't know how it's going to turn out, but I think that it really illustrates very well these four challenges that I wanted to focus on, and

those are the problems posed by anonymity, speed, issues about jurisdiction, and the insufficiency of the evidence. Anonymity, of course the most obvious point is this is the first time ever I believe that the Federal Trade Commission has filed a case against an unknown defendant.

There was an immediate form of relief that the commission believed was important to obtain here and so it sought it, but nonetheless as a result this case was filed against an unknown defendant. I think that we have considerable investigative tools and skills here at the FTC. I think it's troublesome that a law enforcement agency cannot learn the identity of the party or parties who are defrauding its citizens.

Related I think to that is that our compulsory process and the court's compulsory process cannot or have not yet been successfully used to compel identification of the wrongdoer, and I think that that is a very serious situation. The second challenge, that of speed, obviously we've heard from all of our panels this morning, the internet and e-commerce operates in real-time, and in this instance when the consumer

responded to the electronic mail by dialing a telephone number, the transaction and the obligation to pay and the acquisition of the program information occurred instantaneously.

Now, some might say well, this isn't entirely e-commerce because the entire

done in the blink of an eye is overwhelming, and the speed with which fraudulent actors can move and change URL's and change phone numbers and change payment systems and do all of this almost instantaneously is really breathtaking. The third challenge is the challenge of jurisdiction, or reach. I think that there's going to be a great deal of discussion tomorrow about the legal bases for asserting various propositions with regard to jurisdiction for e-commerce.

I would say from an enforcement perspective the real issue is reach. Even if the United States Federal Trade Commission and the courts of the United States have jurisdiction, if we can make the minimum contact argument and assert jurisdiction over the bad actors, the real problem, and Sally alluded to it is whether the courts can reach them, if we can't compel appearances or attach the proceeds of the fraud, then it doesn't do a whole lot of good to get injunctions and to obtain judgments, and that leads to the fourth challenge, which is in the area of remedies, and here I'd like to pick up on something that Sally said. Sally pointed out that in the state of Washington and all of the

states, the attorneys general have been thinking globally but acting locally, and I think that that's really right for us here in the United States, so I would urge us to do a third thing concerning remedies. I think we need to think globally, we need to act locally, but I think we need to imagine boldly what the remedies must be for the kind of problems that we are seeing and that we will see more of in electronic commerce.

I think that no amount of law making or regulation is going to give law enforcers the right tools to deal with these problems, and certainly not alone. What we really need in the remedies area are entrepreneurial partnerships that are based on incentive and self-interest, and they need to be partnerships among government and enforcers and businesses and consumer groups and all of those who have an incentive in a particular instance to protect the group of consumers who are actually or potentially victimized.

And so in the case that I just described wouldn't it have been better if the telephone company that realized in Dominica that realized that it probably had a bad account had

done something to communicate that to the telecommunications industry in the United States that was being used to collect the money for the this scheme, and wouldn't it have been better if they would have notified law enforcement in the United States that they had a problem, wouldn't it have been better if that notice had turned up when our rapid response team looked in the data because we communications from industry in the data, I want to on that point commend, it may be slightly premature, but maybe if I can make it publicly it won't be terribly premature, Brad Handler at eBay, who in addition to doing all the good complaint and fraud handling work that they're doing have committed to furnishing fraud complaint data to the FTC for inclusion in Consumer Sentinel.

We need to get that kind of information, and in the remedies area information has to be part of the remedy. Alternative dispute resolution, there was a question about that a moment ago. I think that is a key remedy for the e-commerce age. Not a substitute for the enforcement of laws, but an area where entrepreneurial arrangements and partnerships

between law enforcers and businesses and consumer groups should be able to provide some useful tools to help consumers be made whole if they've been wrong.

Yes, we need law reform, and I think we've heard discussion and reference to that. Laws should not be an insurmountable hurdle to getting the right thing done, and right now much of the law that we operate under as law enforcers is an obstacle to getting the right thing done. So we need sensible law reform so enforcement is able to move quickly in this era. Sally mentioned MLAT mutual legal assistance treaties. Here in the United States one thing that we desperately need done is for our MLAT's to be revised when the time for renegotiating those comes up to include civil enforcement of the sort that the attorney general and the FTC bring and the consumer protection agencies bring. I think we can probably have, Hugh, a three-day conference on remedies or problems in the e-commerce age. So that we can hear from the SEC and then have lunch I think I should stop. Thank you.

HUGH STEVENSON: Thank you, Eileen.

Actually it is Elizabeth Jacobs who has the real honor of being between us and lunch, but it's important to hear from Elizabeth who is the assistant director for international affairs at the SEC. The SEC of course deals with the consumer protection issues in their sphere as well and they have a perspective to offer here, too.

PRESENTATION BY ELIZABETH JACOBS

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ELIZABETH JACOBS: When I arrived here I got a message that we're running ahead of schedule. We're now five minutes behind. I think the message here is prosecutors love to talk about their cases, and they'll know it's scheduled prosecutors right before lunch, but that being said, we can basically take pages from our game books. I was very intrigued by

a technical expert, but I think the other view that we've heard up here is you don't need to be a real techie to understand what the challenges are that are posed to law enforcement officials in light of global e-commerce.

The SEC has been at the forefront of the battle of the use of the internet for fraudulent securities activities. The first case with international components involving the internet that I worked on dates back to '96. So I think it's sort of in the same time frame of the last five years being when these cases started to come on the rise.

In 1998 we centralized our efforts similar to what the FTC has done with the creation of an Office of Internet Enforcement. One thing that I think may distinguish my presentation from the others is that because we are part of the global community of regulators, we have a very effective organization called the International Organizations of Securities Commissions where other securities regulators get together and work on a variety of different topics, and when the internet came on the scene the very first topic, I think this is fairly

telling, that IOSC addressed was what are the enforcement issues posed by use of the internet, and a lot of them are the ones you've heard already heard today.

The fact that it's fast, that it's low cost, you can reach a worldwide audience and everything looks good on the internet are things that really start to make your antenna go up in terms of the potential if it's in the wrong hands. IOSC issued a report in 1997 in which they did a number of things, one of which, and this is the first slide I have up, they described some of the typical types of internet fraud that people are seeing, and of a number of them I've highlighted two.

One is price manipulation. We have false and misleading statements made about financial instruments or securities and this is talking about sending them by the web, by a bulletin board site, by chat room or by e-mail. This information can dramatically influence the price of instruments potentially if they're sent and traded, and if it's sent in a manner that can conceal the identity of the sender it gives a false impression that there's a lot of active

independent public interest in a stock when in fact that that may be false.

The second sort of common internet fraud that we're seeing are fraudulent offerings and investment advice. We often tell investors that if it looks too good to be true, beware. There are a few mechanisms that can be used quicker and faster and are more visually appealing than putting up a website that has a fraudulent offer on it. To highlight this point, our counterparts in Australia, and they always seem to do things a little bit differently down there, apparently managed to get clearance from their other government officials to have a huge April Fools joke, and they put up a fake internet investment site in part I think to see how vulnerable many of their investors were, and they had over 233 people willing to part with more than four million dollars over the internet to invest in this, and the company didn't exist, there wasn't a prospectus. They put this on their website and there was also a teaser to get people to go in further into the Australian Securities Commission's website where people can readily check to see if a company is registered

or has filed a prospector or if a broker is selling something or floating something is registered with them.

The report also identified the challenges, and these are very common to the ones you've already heard. We need more effective methods for conducting surveillance. How can we as securities regulators become more familiar and search for specialized chat rooms and problematic websites, especially when everything is done in

one, SEC versus Pentaganos, which is a pyramid scheme, it was run from an entity in Italy, and the pyramid or ponti scheme was actually legal under Italian law. Gee, I wonder why they incorporated and decided to do business in Italy. The Italian authorities were basically there for despite the complaints they were getting from all over the world about this entity really not able to do much under their own domestic law.

The website was designed with a specific U.S. home page and ended up having over 400 U.S. residents in twenty U.S. states involved, and this was the subject of multiple foreign action. We've taken action, the Philippine Securities and Exchange Commission took action and our Canadian counterparts issued warnings to their investors and consumers about becoming involved in the Pentaganos scheme.

Also filed within the last I'd say probably month to a month and a half is SEC

other cases where the entity used, Oxford was used as sort of the name, but this was trying to place U.S. investors in a fictitious offshore trade program offering very attractive returns of 10 to 400 percent per month.

The company targeted the U.S. investors in its website, again part of the fraud similar to the ones described by the FTC were accomplished through other means, not just the internet. People came in and visited, they'd connect a telephone answering service that was used to take messages from interested investors, but the websites, the domains were actually registered offshore in Luxemburg and the Netherlands and also the proceeds from this fraud was sent offshore.

Well, the task that law enforcement officials have is daunting. In part getting together with our counterpart regulators we have developed a game plan for trying to deal with this in addition to the number of many prosecutions the SEC has brought in its own

transactions and the ones that we've been able to prove as fraud.

The other thing that we're emphasizing

the proceeds of securities trading.

We have a number of tools that we've been able to use. One is if we can find money here of course we'll try and freeze it here. You've got a U.S. judge, you've got a U.S. bank or financial institution, it's much easier to take the time and litigation to resolve these things when everything is happening on shore.

But where possible we have a number of mechanisms that we can use offshore. We might have to reach out to foreign financial institutions holding the proceeds of the fraud. Getting a letter from the federal regulator alerting a bank that they may be holding the proceeds of fraud might give their money laundering compliance officer a few worries about releasing on the demand of an alleged fraud surfacing.

We have been able to successfully use criminal channels in various countries simply to freeze the proceeds of fraud, but we also have not been shy to actually commence litigation in foreign courts if basically that's what it's going to take to keep millions of dollars out of the hands of the wrongdoers.

One international development that's underway which I hope will be touched upon tomorrow and people may not be so aware of is there current consideration by The Hague for a convention on enforcement of judgments that I

number of issues that are being discussed currently that it may be worth weighing in on. One is the jurisdictional issues where there's the scope of the conduct that's going to be reached in coverage, and the second, which I think is particularly important in light of global e-commerce, is the use of provisional measures and ability to act quickly to freeze money before it gets transferred off to Banatu or some other island in the Pacific where it's going to be really hard to trace.

In closing I think it's pretty to say we've all been able to identify what the challenges are that are faced from the law enforcement perspective. I think that we at the SEC are working with our counterparts in trying to address them by enhancing our technological resources and bringing the cases to send out the message that the internet shouldn't be abused by fraud and to really make the fight against fraud a global effort.

HUGH STEVENSON: Thank you, Elizabeth. On the Hague convention, actually it's a very good point, we will be discussing it later on and we made copies of the current, the most recent

draft and have left it out on the table along with various other materials of interest. We're done now to lunch, except let me mention that there's two breakout sessions that we're going to start up in the afternoon at 2:15, one that's here on the core protections for e-commerce and the other on security and authentication, which will be in the room directly below this, room 332. So we'll see you back at 2:15. Thank you.

(Lunch recess at 1:15 p.m.)

AFTERNOON SESSION**(2:20 p.m.)**

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HUGH STEVENSON: Okay, I think we're ready to start the breakout session on the core of consumer protections in e-commerce, and in this session what we'd like to focus on in particular is what about e-commerce in discussing it is different, what new protections are needed, what protections may no longer be needed. Again I'd like to emphasize that we're talking about an area where there are some existing legal standards, and the question is how to adjust those.

This is a potentially obviously a vast topic that we need to narrow down in a couple of ways, there are a couple of things that we won't be talking about. One is we won't be talking about most privacy issues that were from this

subject of a recent FTC workshop on how clear and conspicuous, what the meaning of clear and conspicuous is in the on-line environment, and finally we won't be talking about various concerns about specialized areas of consumer protection, which of course there are a whole variety of from truth-in-lending to food safety to truck labeling and securities and the like. So those are the things we won't be talking about.

What we will be talking about is to focus on what the basic fair business practices should be for basic consumer transactions. In particular what kinds of disclosures are necessary and appropriate and what basic principles of fair dealing are needed. These are subjects that have also been addressed in a number of the other core that we mentioned this morning such as the OECD, is Trans-Atlantic Consumer Dialogue, the Trans-Atlantic Business Dialogue, and we'd like to talk both about what the principles should be and about how we might achieve those principles.

A word about the format, and I apologize if this was confusing from the agenda,

this morning we had a series of presentations. What we'd like to do now is Lisa Rosenthal, who's the coordinator for our international consumer protection program, will give a brief presentation on the web survey that we mentioned earlier today, but then we're going to have a discussion in a panel format and give and take any questions and answers with the people sitting at the table.

This session we plan to run into about five o'clock with a break somewhere in the middle, and we will be discussing the issues of the disclosures, a general kind of disclosure that might be required, specific transaction related disclosures, and then the issues of fair business practices. I've been asked to ask everybody to speak into the mic and to use your name before speaking so that the stenographer can get this down as easily as possible. So with that to set the stage we will turn to a report on the snapshot survey that we did of websites, both foreign and domestic

PRESENTATION BY LISA ROSENTHAL

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MS. ROSENTHAL: Good afternoon. Is this on? Okay, great. It's great to be in a position where I can actually see the slide projector, I've been sitting under it all morning and sort of half knowing what's going on. I appreciate this opportunity to be able to talk to you about an international web survey that FTC staff conducted during the last two weeks of May to on disclosures and general business information and contract related information by on-line retailers.

I have about three minutes worth of interesting survey results and six minutes of

were offering goods for sale on-line and also those that were using their websites more as advertisement, referring consumers to a telephone number, to their physical address, for example for more information, and we used those sites that have a retail SIC code.

We excluded sites that weren't in English and those sites that did not sell consumer goods that was appropriate for cross border sales. So for example we excluded the site that sold manikins, the site that sold, that offered pizza delivery for example, and the site that sold motor homes. Next slide?

We looked at a total of 200 sites, 100 U.S. sites and 100 non-U.S. sites. We determined, we defined U.S. site as a site that registered for its domain using a physical address located in the United States, and likewise wise for the non-U.S. sites we determined we defined those as those sites that used an address, a physical address located somewhere other than the United States. We drew our sample from a random sample of URL's again with the retail SIC code from Dunn & Bradstreet, and for the one hundred U.S. sites we drew those

from a sample of five hundred sites and for the foreign sites it was a sample of 1,700 sites, and that foreign sites covered a wide range of countries, including actually seventeen countries from Italy to Israel and Singapore to Spain.

Next slide? The questions that we asked -- before I actually even go any further I want to make it clear that the information we looked for on the sites do not reflect a

like the company's location, their physical address, contact information, and geographic restrictions on sale.

For the terms of sale we looked at the information that likely would be important to a consumer making a decision whether to buy a product, including the total costs, the delivery terms, refund policy, cancellation policy, and things like that. Next slide? Okay, on to the more interesting part, the results. Overall we found that for the most part companies are doing a pretty good job of disclosing helpful information to consumers.

However, the results were less impressive for the terms of sale information. Next slide? General business information we found that almost 80 percent of the companies overall, this includes U.S. and non-U.S. sites, ok

country, the disclosure of a country where they're located in a few minutes.

Contact information, again the companies were doing a pretty good job, although you'd think that a hundred percent of the companies would be disclosing information to allow consumers to contact them, especially e-mail address. However, a fair amount did disclose that information, 88 percent disclosed their phone number and 90 percent disclosed their e-mail address.

Next slide? Now on to contract related information. We found in the entire site that

disclose more information about the terms of sale once a consumer has entered her payment information. So it might say you might disclose your credit card information, you click, and then it says okay, the total cost will be, and then you click again. So this is not, it doesn't indicate completely the information that was disclosed. However, we thought it was an appropriate place to stop because most consumers would want to know the relevant information in deciding whether to make a purchase before having to divulge their confidential payment information.

For the next few numbers I'm going to tell you these are limited to a sub-sample of the sites. As I said earlier, we looked both at companies that were allowing consumers to complete a transaction on-line and those that were mostly just advertising, and we limited these numbers to just those companies that allowed consumers to complete the transaction on-line with the thought that if the consumer was then going to contact the company by phone or go visit the company in person, the company would have further opportunity to disclose more

information to the consumers.

So there are 120 sites total in our sample that allowed consumers to make purchases on-line, and of those only 9 percent disclosed the cancellation terms, next slide, only 26 percent disclosed a refund policy, next slide, and of those sites that allowed off-line delivery, some sites just allowed for electronic delivery, and in that case given that it's by definition instantaneous, we thought it was less relevant whether they were disclosing delivery terms, so we limited this only to those sites who were actually delivering the goods off-line, and of those fewer than 40 percent disclosed their delivery terms, including how long it would take for an item to be delivered.

Warranty information, we found that only 20 percent of the sites were disclosing the warranty information on-line, and this is actually an interesting result given the nature of what we're talking about over the course of these two days. Fewer than 8 percent of the sites disclosed the law that would be applicable to the transaction. Now granted, where companies, more consumers are confident about

what law actually will apply, but there seems to be consensus emerging that assuming we can decide on which law will apply, and we've heard that from the Trans-Atlantic Consumer Dialogue and from the Trans-Atlantic Business Dialogue, that that information should be disclosed.

However, of the entire sample only four U.S. sites disclosed the applicable law, and of the sites selling on-line 10 percent disclosed the law that would apply. On to costs. 65 percent of the sites selling on-line disclosed the total costs that would apply, and again this is something that may have been disclosed after payment information was shared by the consumer, and only 38 percent of the sites disclosed the currency that would apply, and I should say that in looking at the currency, we were sticklers on what constituted a disclosure of currency.

If for example a site just provided a dollar sign, they didn't get credit for having disclosed the currency, and the reason is that in doing a beta test before actually conducting the survey we happened upon a Canadian site and it was unclear that we were on a Canadian site, and that Canadian site had disclosed currency dollars

and there was no way of knowing whether that was Canadian dollars or U.S. dollars, so we thought in an international context when disclosing currency it's important to qualify that completely. So of those, only about 38 percent of the total sites disclosed the currency.

It was interesting to see how many more non-U.S. sites disclosed the currency as opposed to the U.S. sites. Only nine U.S. sites disclosed that it was U.S. dollars, whereas 37 of the non-U.S. sites disclosed the currency, and that leads us to the final conclusion, which is sort of an interesting one that emerged from the survey results. We learned this morning a lot about how once you post a website it can be accessed by anyone anywhere around the world. So just because I'm a U.S. company and I post my website here in the United States, it doesn't mean my website is only accessible by consumers in the United States.

However, it seems that U.S. companies are acting like that's the case. In fact, less than one-third of U.S. sites disclosed that they were operating from the United States, and that's interesting when you compare it to almost 80

percent of the sites located outside of the United States that disclosed their country of origin, and it's appropriate and perfectly acceptable of course if the U.S. company has decided okay, well, I only want to do business with U.S. consumers, therefore I don't necessarily need to disclose to them that I'm, where I'm located and that the currency that applies to this transaction is U.S. dollars because I intend only to do business locally.

However, if that's the case the companies aren't telling anyone. In fact, only 21 percent noted any geographic restriction on sales, and we learned from Professor Mayer's study this morning that they may have disclosed this after the fact, in fact way later after the consumer already thought they had made the purchase and they came back and, you know, that sort of now you tell me we don't do business with you outside of the country, but as far as the disclosures up front we found there were very few, and again for the U.S. sites only 11 percent disclosed the applicable currency.

Basically that's the highlights of the survey and we hope that it will be helpful in

talking about the types of information that websites should disclose, and I look forward to having a fruitful discussion about that over the course of the afternoon. Thanks for your attention.

DISCUSSION OF DISCLOSURES

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HUGH STEVENSON: Let's now turn to the subject of disclosures, and as Lisa outlined for you there's sort of two disclosure questions. One is the general disclosure information about businesses, and then there's a second question about what information is disclosed about particular contracts that might be entered into on-line. I'd like to focus first on the disclosure of general business information, and this is something that where there have been various proposals, as mentioned the Trans-Atlantic Consumer Dialogue and some of the things that Mark Silbergeld mentioned this morning about specific proposed disclosures that companies should make about their businesses, their identities, and location and so forth, but I'd like to start with the question of what is it that we want to accomplish through such general business disclosures.

If we think perhaps it would be appropriate to ask businesses to disclose their name, their physical address, what have you, what are the various purposes to be accomplished by

having people make those disclosures. In other words, why would we want to do that, and I pose that question and then look to our distinguished panel and I would ask if people would like to speak if they could just turn their tent on its side like this, and you can do it that way and start from there. Okay, I see Linda is about to turn her tent over so we'll ask her in her view what are the goals here.

LINDA GOLODNER: And probably I'll think of things after other people speak, but just you must have the seller's name, address, physical location, and any other information, telephone number or fax number so that the consumer can call the company or call the seller and ask maybe how do you use the product, more information about the product, how do you use the service. There are always questions to ask that you can't, you can ask those questions when you're in a store buying something but you can't ask them on the internet.

Also for redress, if you don't like the product you really have to know how to return it, and again it's also useful to have the information of where the company is or the

organizations so that you know that you're dealing with someone in a different company.

HUGH STEVENSON: We have Solveig Singleton.

MS. SINGLETON: Just basically I guess three quick points. This will be probably adding questions rather than answering them, but one

rules either on the national level or on the international level.

In a sense it's solving some problems, but it's also creating a new set of problems in that all of a sudden your enforcement concern is not hunting down cases of fraud from perpetrators of actual fraud for example. All of a sudden your enforcement concern is much bigger. It's making sure hundreds and hundreds of websites comply with a disclosure requirement, and I'm not sure whether making the enforcement problem bigger rather than focusing it is necessarily the way to go, particularly if you think about what the internet is going to mean to small business.

For example, I bought some unusual variety of the furniture stain from a hardware store from their website in the middle of nowhere. I'm been dealing with them ever since. They've been in business for fifty years. Their customer service is excellent. They're not posting any disclosures on their website because the idea that a dispute with a customer would be resolved by referring in some legalistic way to a contract is the furthest thing from their minds.

In their eyes the customer is always

right, they don't go to court, and there's going to be hundreds and hundreds of small businesses coming on-line with very much the same mind set. They're not going to be thinking in terms of disclosure things and contracts, and I think it's really important not to presume that these companies are a problem simply because they're not disclosing things.

HUGH STEVENSON: I think that's a point --

though is just what are the affirmative needs that might be addressed by having any such principles saying that there's a disclosure requirement. For example, Linda raised the issue of the ability to contact the company. Even if the company believes the customer is always right that may be because they never hear from them because they didn't put down any way to contact them. Jean Ann, you have your flag up.

MS. FOX: Yes. One of the other reasons why we need a baseline standard disclosure of information on websites is so that consumers can assure themselves to be confident and comfortable that they're dealing with legitimate businesses that can be found, that this is one of the key layers of problems created by doing business on the internet and in the national marketplace. It's the difficulty consumers have in knowing with whom they are doing business or whether there is a legitimate, I would argue that basic consumer protection disclosure requirements are necessary to benefit small businesses in the e-commerce arena rather than a burden on them.

The very large companies have named that commission, everybody knows who they are,

and if we deal in a voluntary everybody does their own thing regime I believe that small businesses will be disadvantaged because consumers won't feel confident in doing business with them without adequate consumer disclosures and consumer protection. So I think it's good for competition for there to be basic requirements that everyone has to comply with.

HUGH STEVENSON: Thank you. Caitlin Halligan from the New York attorney general's office.

CAITLIN HALLIGAN: I'd just preface my opinion and just say that they represent my own views and not necessarily those of my office. Along the lines of what Jean Ann is saying, I think there's an additional reason why those kinds of disclosures might benefit consumers. It may be the case depending on where we end up with questions like choice of law and form selection that a consumer may find it more difficult to gain redress depending on where the operator of a website or a company is located, and that's something that a consumer ought to be able to factor in to any decision that's made about whether to purchase a particular product.

I think another reason, and this is more a self-interested one I think, is that it makes it easier for law enforcement to monitor the kinds of activity going on on-line. If a business is required to state its location and we're looking at whether or not there's compliance with a particular state statute that we're looking to enforce, it's obviously a lot easier to get a sense of what the sellers located in our jurisdiction are doing if the location is right there for us to see.

HUGH STEVENSON: Jill Lesser from America On Line.

JILL LESSER: Thank you. I actually agree with a lot what's being said about why we want to have that kind of information, name address, contact information, and I would even go further to say terms of a deal, making sure that consumers know what return policies are, making sure consumers what they need to do if they want to contact a customer service representative, all of that information is critical for consumers to have.

I don't know that it's necessary to get into a debate about whether it's mandatory or

voluntary, because just speaking from the perspective of one of the largest companies that's actually both engaging in commerce ourselves and also creating a quorum for other companies engaging in commerce directly with customers, and that is that we are still at a clear growth point in this medium and clearly at a point where consumers in total are not yet comfortable with the medium.

So we will not be able to -- it is our view at America On Line to build e-commerce to a point where it really is a principal way people do business if we don't offer these kinds of disclosures and comfort for people who are much more used to engaging with people off-line therefore in an interpersonal situation where they have a physical location that you can go back and complain to a physical person that they search out in the company, or even just ask questions.

So, I think what you'll see over time is that exactly what Jean Ann said, which is you won't see businesses surviving in this environment if they don't offer consumers what they need in terms of information.

HUGH STEVENSON: Let me ask on the goals that have been identified which if I can briefly characterize them, insuring confidence to do business with a particular company or a company to a particular location, the ability to contact companies with questions or complaints or returns, and then the issue for the ability for the law enforcement field to locate people, does anyone disagree with the proposition that those are reasonable and appropriate goals to be served? Yes, Kaye Caldwell from CommerceNet.

KAYE CALDWELL: I'm not sure I'd characterize this as a disagreement. I would however urge care in looking at what things need to be required, and just as examples of some things we've already talked about, I might disagree with the requirement that a phone number be provided, because you might have a very small business that only provides an e-mail business because they don't have people there to answer the phones and they know people prefer to communicate sometimes on the internet by e-mail.

Indeed one of my favorite services I bought from a company that owns the rights of the e-mail address and I was perfectly happy with

that. So you might want to have a method of contacting but not specify that you have to have A, B, C, D, and E. The other area that I think you might want to think about is this question of physical location. Now, we've dealt with that in California in a very particular way. I agree that you need to have a mechanism for contacting and you need to have physical location, but don't forget that with all these small companies going on the internet, many of them may be working out of their homes and may feel uncomfortable putting that information up on the internet, so you need to give them a way to deal with that.

The way we've done that in California is we have laws specifying that while you're normally expected in a business to give your physical location on certain advertising materials, that you can use a commercial mail receiving agency or a post office box, but we have a very specific laws in place saying, actually I think it's a federal law that determines that the post office has to be able to find your actual address, that it has to be on record.

In California we have a law that says

if somebody trying to serve legal papers on you and you're using a commercial mail receiving agency, it is sufficient for them to serve those papers to that location, you know, the people behind the counter. So when you look at these setting up these kinds of regulations I think you need to be very, very careful and make sure that you do them in a way that's very, very flexible and will apply to very small businesses, and you may want to make sure that you meet certain needs that they might have.

HUGH STEVENSON: Frances Smith.

MS. SMITH: I've had a turn up, so if don't mind I'd like to respond to a couple of things that the other people have said first, and one thing that struck me as a consumer group is when Caitlin mentioned that it would make it easier for law enforcement officials to track people and such, we were involved in the know your customer financial institution where it looked like a good idea for law enforcement to look at their bank customers as potential money launderers, and I don't think that's a good reason to require something.

I think if know your customer got two

hundred thousand comments and it wasn't from individual people mostly on the internet, I think you'd have an upheaval of that sort, too. So that's just one point, making it easier for law enforcement should not be the purpose of a law to protect consumers. Another point, we talk about what consumers are looking for, and they're looking for some degree of confidence either in the product, some degree of confidence in the company.

They may be looking for price, they may be looking for a lot of other things. As Solveig said, she's looking for this particular brand of varnish or paint, I think that's what she said. So I think for us to presume that every consumer is looking for the same things in terms of disclosures is a bit I think an elitist point of view. I think if you're a company that wants to instill confidence in their business, you all heard about eBay this morning, sets up a complete system of consumer protections so a stranger from across the country can deal with another stranger across the country with a great degree of confidence that that transaction is valid, that the goods will be delivered as purchased.

So the point I'm trying to make is I think with this dynamic medium we see a company

greater degree to determine what kinds of disclosures and what kinds of pricing and what other terms and conditions they want to have.

In other words, you customize the disclosures rather than saying one size, like the phrase one size fits all. So in one scenario you can say that the seller comes to a consumer and says okay, I'm going to offer this product or service at the following price with the following types of conditions, terms, conditions, including delivery and all the things we talked about earlier today. The customer can then negotiate with the seller, not just on price but on the other factors, too, and then they can come to a negotiated agreement.

Or alternatively another scenario, the customer makes an offer to buy a product because

think that we ought to try to go beyond the box we're trying to stage, trying to fix for the on-line environment what we have today and an off-line environment, so that's really a fresher approach to it.

HUGH STEVENSON: Haywood Torrence from Bell Atlantic.

HAYWOOD TORRENCE: Thank you. I think to echo what Peter was just saying, one of the new things about the internet is that it does offer fairly unique feedback loops for consumers to provide informations to other consumers, and while that may obviously not obviate all problems and indeed may even cause some problems, it does I think provide an additional incentive to people who are in business not to engage in activities that are designed to either defraud the consumer or make it difficult for the consumer to get your address if there are concerns that the consumer has.

I would give you one example which I think I sort of found humorous actually. Last July a year ago I purchased a new computer, and I ordered the monitor and the scanner separately from the processor itself, and I realized after I

had searched out on the internet the cheapest place to buy this and confirmed from the pricing engine that I used that this was at least an extensively reputable company, that I didn't know where this company was. And I went to look on its website and I didn't spend a long time. I could not find its address.

I was concerned for probably about thirty seconds about what have I done, and then I remembered there was a thing called Reg Z and I sort of went about my business. When I got home, I ordered this about 3:00 on a Thursday, when I got home on Friday the scanner and monitor were sitting in my garage. I had someone in there working during the day and the product was there. So I think that we can spend an awful lot of time worrying about potential problems that in fact are not going to be problems.

I would add the following follow-up, I bought just a couple of months ago an additional item from this company. They now disclose their phone number and address, and I suspect it's probably because people like myself who sent them an e-mail saying where's your address and phone number, and I couldn't find it on the website,

probably got that feedback back to them.

HUGH STEVENSON: Mr. Thompson?

COMMISSIONER THOMPSON: I think one of the things that in listening to some of the responses that raises the question in my mind is to make a distinction from the consumer perspective as to what kind of comfort they're going to need versus what kind of recourse they're going to have, and maybe if some on the panel could address that a little bit, because in looking at how internationally people look at this issue, I've had a lot of people come to me to say it's necessary for us to have an address, and we say why is that, because in some ways is it more important for a consumer to have a means of redress knowing that they can get to somebody, some person, some thing if there is a problem, or is it that they need to know that there is a place, a site for the person that they're dealing with, and are they looking at two different things, the remedies and the comfort level?

So I was curious about that because one of the concerns that I've heard expressed here that I've also voiced is that in looking at how governments look at this issue, they need to have

some degree of caution not to be too wedded to a particular type, piece of information which may or may not be relevant five years from now. So I was just curious about others' impressions.

HUGH STEVENSON: Dave Clausen, please.

DAVE CLAUSEN: Thanks. A couple of points to those questions, Commissioner. First of all, the worst assumption you can make on the internet is what governments naturally do anyway is they have to represent all the citizens here, and they have to come to a baseline that, you know, all men and women are created equal, we start there and go up.

On the internet that can kill you. The point is that consumers are very, very different. They're different economically, they're different socioculturally, they have different languages, they have different behavior patterns, and your question about how much information is a very critical one because I think what you'll find is that disclosure on the internet is used in a protectionary way. It's actually going against the whole reason the internet is there.

These consumers are on the internet

buying and selling at eBay and it any other sites because they want to be. They are getting benefits from it, and that benefit is primarily due to the savings in time. They may in fact not want to deal with human beings, god forbid. They may not have the time to deal with human beings, god forbid, so the need for a company address may not be the first thing that comes to their mind. This issue comes up all the time.

So if you look at it from the companies that are servicing consumers on line, the first level is what is the minimal information on each to provide in order to get maximum use of that consumer's time at my website. They're paying for this time on-line, it's costing them money for the phone connection and the computer time. That's what a consumer, most consumers will tell you is their primary reason apart from saving money. They list saving money first and we actually see that it saves time.

If you go to the next level is what if the disclosure is actually beyond that as the next step, what do I have to tell the consumer by law. At the minimum I think it's desirable that companies like eBay and others do is provide

maximum information that the consumer can drill down to his or her needs, and I think that is where that differentiates the better transaction oriented sites from the minimal ones. Those that recognize that all consumers are not the same, you need to provide a range of spectrum of information.

What is the minimum, should we treat all people equally? I don't think so. If you go over to Europe as we discussed this morning, simply asking for someone's address can be seen as a social affront not recognized in the cultural and business environment of that company, so you could risk almost some materialistic points of view by assuming that there is a base level that the whole world must operate by, and this is one where in particular the FTC has to take a look and observe behavioral patterns that begin to explore and experiment and understand what in fact is required and where.

The information needed to purchase a car is very different than the information you need to buy a book, and to simply say that one cost is going to cover all those would be a useless thing.

HUGH STEVENSON: Ed Mezowski, how would you respond to that?

ED MEZWINSKI: Well actually, Hugh, I just had another comment but to respond to something earlier if that's okay, but I just wanted to make the point, I mean, when U.S. Consumers Union and the Consumer Federation of America lobbied passage five years ago of the toy safety Labeling Act, we had to agree to an 18-month implementation period because in order for the toy manufacturers around the world to take their old stock we had to give them an

described. Here we are, we've been on the internet for several years now and companies are still in the 10 percent range of providing the kinds of disclosure that the FTC, our expert agency, thinks they ought to be provided, and that's why I think we need to provide minimum standards, minimum disclosures. I mean, if companies aren't providing disclosures, what about other consumer protections? Thanks.

HUGH STEVENSON: We should probably clarify, I think Lisa mentioned in the study we have not made a determination necessarily what exact information should be required on websites. One of the starting points for that was actually the language in some of the draft OECD e-commerce and consumer protection principles, and there have been some differing approaches there and some companies have pointed to requiring either as matter of reguleenug

not necessarily taken a position on whether that particular information is what is being disclosed. What I was trying to get at earlier was whether there was any particular disagreement about the legitimate purposes for which we might seek the information in some form, not exactly what information might be required.

For example, someone made the point that if the goal is to feel that you know where you're doing business with someone, namely they're governed by the laws of California, it may be necessary to have a physical address or it may be necessary to have some other piece of information that serves the same underlying purpose. Alan Anderson, you've got your slide up for a comment.

ALAN ANDERSON: Thank you. A couple of points on the initial question about what are we trying to accomplish relative to basic disclosures. At the end of the day right now on the internet only about 35 percent of the consumers are actually executing a retail transaction. So from a business perspective what businessman want is to convert more of those consumers into a sale, and the consumer wants

help in making informed decisions, and both of those processes are very important so they'll work hand in glove because the more the consumer

owner, they say, you know, I have received fewer calls asking about my business as a result of having that seal in place and my business practice is adequately disclosed.

And so you end with a significant win/win situation from the standpoint the consumer is protected, the consumer has all the information from which to make an informed decision, and the business owner, the website owner also has increased business because they've adequately communicated who they are, what they are, how they conduct business so that the consumer that's at their website will be interested in executing the transaction.

HUGH STEVENSON: I'd like to put out a question moving from the disclosures about general business operations to specific transactions that people might engage in on-line. I noticed in the Trans-Atlantic Business Dialogue papers a reference to, it was in the context of talking about self-regulatory goals as opposed to regulations, but as a self-regulatory goal if you will there was mention of the following, the suggestion that the consumer should receive prior to entering the

on-line contract all relevant material information necessary to make an informed decision about a contemplated electronic commerce transaction. I wondered whether people had reactions to that, whether that principle makes sense, and again not whether this should be then therefore mandated into law but whether as a general matter the idea of disclosing relevant material information and disclosing it prior to the transaction is a sensible approach. Solveig, did you-- or Cait Halligan.

CAITLIN HALLIGAN: Well, I think it's a good principle, but it's certainly vague. I think you must have to look at it from the seller's point of view. Trying to have a regulation that said that would be way too big.

HUGH STEVENSON: Are the other reactions to that particular, are there other reactions to the proposition of disclosing whatever information is disclosed before the transaction as opposed to afterwards? Jean Ann?

JEAN ANN FOX: The whole purpose of information disclosure is to allow the consumer to make the decision, and you have to make the decision based on the information before you

decide to buy it, and so any disclosure made after the fact is rather superfluous really and the comments that CFA and the National Consumer Law Center filed in this docket, we laid out a fairly extensive list of disclosures that we thought ought to be available to consumers before the transaction is made, with more disclosures depending on the value of the transactions which has the minimal disclosures for small purchases and as more money was involved you would have more disclosure information available because of the fact that consumers feel they need more protection when there's been greater amounts of money, but the basic concept here is pre-purchase disclosure so that that information can inform your decision.

HUGH STEVENSON: How about the, Jean Ann just referred to the more particular disclosure proposals that CFA mentioned and I think some overlap there or similarity with some of the ones that the OECD had made, what are the reactions to that approach from others? What's the problem with that? What's wrong with that approach? Solveig?

SOLVEIG SINGLETON: Let me grab the

mic. I guess I just wanted to, my experience of business practice now just both on the web and in the telephone mail order context is you give them your credit card number, you tell them the item numbers you want, the operator on the phone or the website billing address then tells you what the total is going to be calculating in shipping and tax and all those things that you don't really want to think about until then, and then basically you get a chance to cancel.

I mean, if you're talking on the phone with an operator you can say oh, I didn't realize the tax was going to be that much, I'd like to cancel, the answer would be oh, okay. Where on a website there's also usually a little do you want to go ahead with this transaction thing, and I think that -- I mean, I think that if we want to go sort of standing a usual business practice on its head and try to, you know, having another layer to it, it's just really important to think about whether that's really absolutely necessary, because it seems to be working fine the way it is now. I mean, maybe over time other business models will be tried that are more successful, but in terms of requirements I guess I don't see

any pressing need there.

HUGH STEVENSON: Okay. Following up on that, what would people say if anything is impressing me, why is this any different from media that already exists, or is it in any sense is there any need to have any different kinds of disclosure rules about contracts that you might be entering into? Dave Clausen?

DAVE CLAUSEN: Yeah, I think if you asked a retailer that before you could buy something from the checkout stand, the person checking you out had to put a disclosure policy in front of you, had to remind you of what the tax was, and then had to ask you do you still want to buy this product, I think you would hear a human cry that you don't seem to be hearing on the internet.

One of the issues about the web I think that has people nervous is the fact that it is new and it is a change, it's a very powerful change, but because the change is the difference doesn't mean that all of a sudden we have to feel that it's going to somehow be the ruin of the consumer out there. In fact, it's quite the other way. Let's look at the observed behavior.

More people are going to the internet, are raising their hands saying they intend to purchase this way and are in fact doing so. So the point is you can either work with the flow or work against it, and to answer the question you asked, Hugh, there's nothing wrong with disclosure. The question of what we don't know is how much is enough and how much is enough when you're again buying a home is very different than how much is enough when you're buying a book and it's very different in terms of who you are and how you purchase, and I think we can all agree that disclosure is good, just like going to college, but what you learn there and what you do with it are very different depending on who you are.

HUGH STEVENSON: Yes, Peter Gray.

PETER GRAY: Let me just add to that, first of all we talked about disclosure. Many of us who have worked on disclosures and have written disclosures and tried to get consumers to understand them I think is a problem here that we ought to go back to, which is too much disclosure obfuscates the whole thing and doesn't protect the consumer at all. In fact, it just has the

reverse effect.

Secondly I think we should go back to looking at disclosures in terms of plain language, and I know plain language in all the countries around the world is a difficult thing. We tried plain language in the United States, and that's almost an oxymoron but think of all the other countries that have to do things in plain language. Nevertheless I think there was a wonderful example given this morning by the gentleman from eBay on the privacy disclosure that he put up in a very simple understandable form, and I think we should spend more time

plain language as we possibly can.

HUGH STEVENSON: Thank you. Caitlin Halligan.

CAITLIN HALLIGAN: I think the way we're carrying this discussion right now is we're asking the question are there new disclosures which are appropriate or necessary for this medium, and I think it's important to recognize that I think any existing rules about disclosures should be extended to on-line transactions. For example, in New York in order for a merchant to take advantage of any restrictions that it places on refunds, it has to disclose that refund policy up front at the time the sale is consummated. I would think that it's pretty straightforward that that applies whether the transaction is consummated on-line or off-line, and that's an example of a disclosure where a disclosure would have to be made on the phone.

HUGH STEVENSON: Okay. Haywood Torrence.

HAYWOOD TORRENCE: The question I would ask you is in the on-line world what constitutes that disclosure? Does a hyperlink to a place that from the purchase page constitute disclosure

or does the text of that disclosure have to appear on the web page itself where you're about to make the purchase?

CAITLIN HALLIGAN: I think that's a difficult question and I think that's one that

would be somewhat like the page that I always get whenever I open a new piece of software, that license page which I of course always read before I agree to.

I think that there are disclosures, one of the real advantages of doing that I think is that it does allow the individual who wants to find out more information before making a purchase very easily to ask the question of the person who is selling the good, because almost always there is a way on the website to contact the company, and if one does not feel comfortable, if that doesn't, isn't the case, one ought not to make the purchase. It's that simple.

HUGH STEVENSON: Given that we may have the problem of sort of word blindness on the net or the problem of disclosure becoming overwhelming, what would people articulate if there are key minimum disclosures, what would they be? In other words, if there may be, and it may be that there, obviously there's a whole universe that you could require but with kind of a clear down side as you articulated, are there particular cases that people see as something you

just do not do without as a matter of, as a fair business practice to disclose on the website?

Kaye?

KAYE CALDWELL: Actually I think I might want to go back to your other question a little bit and talk about this disclosure issue and again the number of different disclosures. One of the things that I think the government could be quite hopeful in doing is putting together an informational effort for small businesses to let them know what all these disclosure requirements are in all of the different states in the U.S. and all of the different countries in the world so that they have an understanding of what they may be expected to comply with in these different places.

In the process of doing that I think you're going to find how incredibly confusing this is. You may find that some of these disclosures are contradictory. You may find that some of them are not in simple language because the law requires them to be stated in a specific way, and you may start to perhaps feel like may you should work with some of these jurisdictions to get some harmonization, some simplicity so

that these disclosures can be made in an easier way.

Another thing I would suggest that might be an interesting project is that it might be nice to have some standardized international icons that could be used to click on so that there's a specific icon that will always link to the information of the location of the business, one that would always link to what the warranty policy is, one that would always link to what the privacy policy is or might just perhaps identify that there's a particular privacy seal next to that particular one.

That could be very useful and could save consumers a lot of time and enable them to look at the things that they ought to look at and find them very easily, so I would suggest some educational efforts on those disclosure requirements helping both consumers and small businesses might be incredibly useful in this area.

HUGH STEVENSON: Frances Smith?

FRANCES SMITH: Yes, I'd just like to make a few points on what was just said about the some of the links and some of the hyperlinks and

icons and such. I think we're already seeing that developing in the private sector. We now see BDD on-line privacy policies, we see seals of all sorts of business practices policies BSZNet, we heard about Net Trust as well, so we're going to see merchants on the internet increasingly having these available seals that someone is particularly interested in warranties, in the reputation of company, in the privacy policies of

practices are. So I think that's a very important point that we often overlook. It's a simplistic one, but this is a dynamic medium. Looking at it from a static form can, from a static point of view I think can be a great disservice to the users of the internet.

HUGH STEVENSON: Mr. Thompson?

COMMISSIONER THOMPSON: I think they are very interesting points. I guess they raised a couple of questions for me. One is, and I often hear this, is that I'm struck by what we heard this morning from, about the study and looking at ordering goods and what the experience was and that can we say are there some things that, differences where consumers don't know what they don't know, and that's a question I raise, and the second is that notwithstanding the fact that there's this high degree of dynamism, if one desirable goal that everybody seems to be talking about is the fact that people want to broaden the use of the internet as a means of transacting business, then what does that say about the degree of risk what consumers should be looking for and what businesses should be providing? That's something to throw in as a factor as

well.

HUGH STEVENSON: Jill Lesser from America On Line.

JILL LESSER: I think in the context of both what Commissioner Thompson just said and the entire discussion that it's important to ask the more macro question of sort of why are we here, and in part the question is what do, what are we trying to do through consumer protection? I think there's sort of two different things. The first is to provide a level of clarity for consumers so they understand their rights and responsibilities when they're engaging in commercial transactions, and the second I think to protect them from fraud, from deceit, from trickery, and I think in the on-line environment that is where a lot of the focus needs to be with respect to the role of agencies like the FTC and state attorney general and governments around the world because what I see evolving on the other point, which is the right to responsibility, is a process whereby companies must if they want to succeed really undertake to provide the amount of disclosure that consumers are looking for, and I think the example given by eBay this morning was

a perfect one. We have never seen that kind of an auction business before, and in the context of trying to provide that service they obviously realized that there were certain issues that were emerging, and authentication is one that was brought up, you know, am I going to really be buying a baseball card of Thurmon Mundsén, who's my favorite baseball player way back in the 70's on the Yankees.

You know, I mean I think what you're finding and we're finding this within AOL as well, we have long had a content based service, and over time, particularly over the last year and a half we have tried to move a lot towards e-commerce and we have a whole shopping environment, and in that shopping environment there are more than 150 merchants. In order to basically invite customers into that shopping environment, to that merchant's environment, what we basically have found through feedback from our customers is that our customers want to know something about that environment. So each of those merchants is now in order to basically be an AOL merchant has to be within our certified merchant program, and that certified merchant

program has several different aspects to it, some of which I mentioned earlier, return policies, privacy policies, making sure that there's a certain amount of customer response so that for example an order must be processed within 24 hours of receipt.

There are several different aspects of the certified merchant program that also include a money back guarantee and in the end a guarantee from AOL that if s as asÈ

JILL LESSER: Let me run through them. Basically the certified merchants program is as follows, and as I said we have more than 150 certified merchants in the program and it grows every day. The first is a posting requirement, essentially a notice requirement so that there has to be complete details within each merchant's environment, their customer service policies, including contact information, shipping information, returns policies, and guarantee information. They must receive and respond e-mail within one day of receipt, respond to e-mail, excuse me. They must monitor their on-line store to make sure there are no for example out of stock merchandise, so if there was a special on a product that was featured on the site, they must monitor that site to make sure if the product was sold out that they were no longer promoting it.

They have to both receive orders electronically. We don't want our customers to have to essentially go off-line. We want a full seamless on-line experience, and that those orders have to be processed within one business day. They have to provide the customer with an

order confirmation within one business day, deliver all merchandise in particular professional packaging, ship the displayed product at the displayed price without substitution and agree to have a privacy policy that is consistent with AOL's privacy policy. They don't have to actually adopt our privacy policy, but essentially all the elements have to be consistent.

And you know, in addition to those sort of affirmative obligations are ways for the customer to then contact AOL or contact the merchant directly that they can get their questions answered, and it is only relatively infrequently that a customer who goes to the merchant and doesn't receive a satisfactory response from AOL, the customer sort of gets directly involved, and what we always try to do, and actually I've never had a complaint going down this, is that we leave that customer fully satisfied. If we have to work with the merchant to correct their policies, we do that.

HUGH STEVENSON: How does that sound as a basic approach? Michelle Turner from Dell, and then Linda Golodner.

MICHELLE TURNER: Thanks. First I'd actually like to comment a little bit on what she was saying and indicate that we would certainly agree with her approach in terms of bifurcating the views on consumer protection and sort of two ways to look at it and the two different aspects of the issues, and I think that's exactly right. Folks have mentioned the dynamic nature of the internet, the evolving and growing nature, and I think it's also important to keep in mind the highly competitive nature of the internet.

It is in many respects far more complete than in the physical world because of the many opportunities that consumers have not only to get access to a wealth of information at a moment's notice, but also to do comparative shopping, comparative assessments of companies and what their policies and practices are, and they can simply choose to go somewhere else with nothing more than a simple click, so companies have strong incentives to protect their consumers, to inform their consumers, and to make sure that it's a safe place for people to come and they have their trust around that website.

I think we certainly feel and have seen

that the people who will succeed in the internet environment are those that do just that. In fact, at Dell the one thing that we learned very clearly is that it's a huge competitive advantage to make sure that we put our policies out there very clearly, to make sure that our customers have access to all of the information that we have inside the company, and that's going to be a benefit to us.

Dell is an 18 billion dollar company last year. We have a strategic goal of selling 50 percent, getting 50 percent of our revenues over the internet by the end of next year, so we certainly are moving in that direction and incentives in that direction, and in the first quarter of this year 30 percent of our 5.5 billion dollars of revenue came from on-line sales, and I can echo what Dave was saying, we did that with virtually no customer issues or

I wanted to refer to Rob Mayer's study that the terms of sale are very important, especially the terms with regard to how much postage you're going to have to pay and if you're going to return it how much postage you might have to pay. Also how the seller is going to confirm to the consumer that they actually made the purchase.

You also have to know what to do in case of replacements, in case something arrives broken how you get back to the seller, and even though it might seem appropriate to do everything on-line, I think there has to be some way to reach a seller off-line, especially with regard to special questions that a consumer would have. One thing I would add to Jill's list is what laws apply, and especially as we move into more selling and buying offshore.

I also wanted to refer back to some of these questions that people had earlier about should it apply if you operate your business out of your home or if you're a small business. I think all these rules should apply to everyone. If you're working out of your home you're operating a commercial business, and I think you have take those, if you're risking to sell

something you also have to have disclosure. I don't know why people would be afraid to do that.

We all know that fraud can be perpetrated from kitchens. A lot of the boiler rooms in telemarketing fraud came out of small business and I think we always be aware of the sharks and barracudas that Mark Silbergeld mentioned earlier this morning.

ALAN ANDERSON: Alan Anderson from AICPA. How do the elements that Jill mentioned square with the program that you all had discussed?

DAVE CLAUSEN: Actually they square up fairly well, everything that Jill mentioned clearly in the CPA lecture program. A couple of things that we've added to the program in the most recent version is the jurisdictional aspect of CPA Web Trust as far as what country's rules apply, and right now based on since there isn't a legislative solution right now, it's website only that we're saying right now, we also are a little bit more specific, I couldn't quite tell from Jill's comments, but we actually put a name or a department or who to contact as opposed to just a

phone number. We have a specific contact name, and I couldn't tell from Jill's comments whether or not, they square up pretty well, and if you look at the statistics that Lisa presented, I mean they all match on what there's not going to be on websites today that the certified merchant program and CPA Web Trust are addressing the things that consumers need to know.

HUGH STEVENSON: I'd like to turn before the break to the other question, which is there are obviously a couple of different ways to approach having a fair business practices. One is to have them with self-regulatory codes of various types or with businesses adopting their own codes as a way of attracting business for competition. Then there's also the option of having certain disclosures mandated by law, and so it would be helpful to hear people's views on whether that's a good idea or when it would be a good idea. Solveig Singleton?

SOLVEIG SINGLETON: Actually this is still up from the last time.

HUGH STEVENSON: Okay. Jean Ann Fox?

JEAN ANN FOX: Sure. We believe that there should be legislative minimum requirements

that the role of the voluntary programs that businesses are joining into is to provide over and above the minimum necessary requirements of law. That's true in the off-line world, we have a lot of legislative information disclosure requirements, and there's no reason for the internet to be any different. In fact, it's more important to have a legislative baseline because of the international aspect of the market.

In listening to the earlier discussion about the cut throat competition on getting prices down for example, from my old days of running Accounting Consumer Protection Agency my experiences would lead me to believe that sometimes that kind of cut throat competition would encourage folks to cut corners a bit, and when you're dealing in an international market where you're not counting on repeat business from the folks just in your neighborhood and consumers have difficulty getting their hands on the business, I would think you could stay in business for quite a while cheating people one at a time rather than having to worry about seeing a reputation in a local area. So I think we need some basic enforcable disclosure requirements and

consumer protections, and all of the good voluntary self-regulatory programs should be on top of that.

HUGH STEVENSON: Dave Clausen, what's your reaction to that suggestion?

DAVE CLAUSEN: Different. I think speaking for some of our clients and who we do business with, and the first question we'd ask is is the mechanism in place to resolve the issue now. I would argue that most of the mechanisms to take care of the issues that have been discussed today are in fact in place right now. The FTC is already following eighty some odd cases. How can we empower the FTC to do more?

Second, I think the, in terms of whether you legislate disclosure or not, again my concern is internationally I know of very few global legislative issues that have been very successful anywhere, maybe I'm wrong. In many cases I think if you look at the banking and financial industry, they are trading trillions of dollars a day in currency exchange as we speak. They have somehow managed to move your money and mine fairly effectively all over the world and do okay.

What can we learn from that industry and how it approaches these very same issues. There's no difference there in the Canadian industry's perspective a smaller number of players and now we're about to open it up. Secondly I think the vigorous pursuit through existing channels of resolution is what I would argue for. Begin with proactive information distribution. We shouldn't be asking in the sense what is the minimum, but what is the maximum.

If you look at AOL, they're not mandated into doing that. What they understand is that they do more business that way because that is one part and only one of a complete consumer experience for them. They want those AOL users to come back to that AOL mall and shop with these people and it adds value to the people who licensed the right to be on AOL, and finally I think looking at the role of the FTC and government in general, we should help drive these market efficiencies.

I mean, the whole point about the web is the fact that it is a community, it is information exchange, and maybe we need to

rethink the language. It shouldn't be so much about disclosure, which is a somewhat pejorative term, but how can we open up, provide more, educate? If you made the analogy that the best way to stop kids from smoking is to get them while they're young and educate ahead of time, it seems to be the only thing that works.

Perhaps we should take that same sort of approach to empowering the consumers everywhere in the world to know as much as they can, and whatever the FTC can do apart from mandate the rules and legislation that have to go above and beyond where we are now I would argue

raises a very important point, which is that I think it's way to early to conclude that the competitive nature of the internet will fix all these problems.

We get thousands of complaints every year from consumers, and a number of them definitely involve outright fraud, you send me your money and I'll send you nothing in return, but quite a substantial number also involve consumers who as I think Commissioner Thompson said didn't know what they didn't know when they got into a transaction and they're frustrated, some of them can't contact the entity that they engaged in a transaction with, and they want some relief. So I think that it's way to early for to us conclude that competition will be the cure for everything that we're looking at here.

HUGH STEVENSON: Haywood Torrence?

HAYWOOD TORRENCE: Well, I'm not sure that anyone was suggesting that competition is the complete cure, but I certainly think that it has some material impacts that perhaps might be more completely taken into account. I was looking at the internet fraud watch site that is run by the National Consumer League I believe,

and they noted that they had 100 fraud reports per month. These were in 1997 figures. I couldn't find any '98 figures on that, but they also noted that they had 350 calls a day to their 800 number about non on-line fraud, which I think at least works out to about 130,000 a year for non on-line versus 1,200 for on-line.

I think it is important before we start to create new rules particularly for mediums where there are such strong feedback mechanisms, to keep in mind the magnitude of the problem, to assess that magnitude, and seriously consider whether there is a unique problem that requires additional new rules before we start to write them.

HUGH STEVENSON: Those are your numbers, Linda. Have they changed?

LINDA GOLODNER: Yeah, we had 600 percent increase last year in internet fraud. I don't have those numbers right in front of me.

HUGH STEVENSON: Solveig Singleton?

SOLVEIG SINGLETON: Just one quick comment that so far we've kind of assumed out of the picture in thinking about international agreements, and that is that one of the major

issues would be what language are the disclosures in. If you have a company that's based in Germany, say it's selling tropical fish supplies of the kind you can only get in Germany, another personal experience, its website is in the German language. They may have the most wonderful disclosures in the entire world, but I cannot read German.

I can go to the website and I know enough about the specific product name that I'm looking for and what the product looks like to be able to get the kind of oxidators that I want, but as far as disclosures of any kind are concerned I'm not going to be reading those or understanding them. So I guess that's going to be a major problem in this international context and I just, I mean I cannot see the French being very happy with being told that they must post disclosures in English. For that matter even any reason that they should at all because that most of the people speak Chinese, so I mean there's a huge issue there waiting.

The second point is I think from the standpoint of consumer risk and the question of how much risk will allow them to bear, it's going

to vary widely from context to context. If I can only get the product I want by going to a website that's posting no disclosures and is in a foreign language, I'm going to do that and I'm going to want to do that as a consumer and I'm going to be angry with any national authority that tries to stop me, and I'm also going to take steps to evade that law.

So I'm concerned also about whether it's national or international and mandatory disclosures are seeing actual enlarging the enforcement problem from the standpoint of an enforcement agency, because instead of focusing on actual fraud, actual problems, instead you're focusing on the question of these disclosures, and that has to involve every single website in existence. So that's all.

HUGH STEVENSON: Ed Mezwinski, we'll give you the last word and the I think we'll take a break.

ED MEZWINSKI: Thank you, Hugh. Just very, very briefly I agree with Jean Ann's comments. I think there needs to be a floor of consumer protection law to protect consumers whether on-line or off-line. A word I haven't

heard today is enforceable. We need enforceable consumer protections, and I don't see voluntary self-regulation providing that, although obviously I'm encouraged that competition has caused large companies like America On Line to require their merchants to have strong codes of conduct, so enforceable is the word that we're looking for that we don't seem to get with voluntary. Thank you.

HUGH STEVENSON: Thank you. So we'll meet again at 4:00. Thank you.

(Recess taken at 3:47 p.m. Seminar continued at 4:03 p.m.)

HUGH STEVENSON: Okay, I think we're ready, ready or not, to go. I wanted to before we turn to the, what the substantive protections should be, there's one more question on disclosures. We had focused earlier in our questions and comments on what's different about e-commerce and for consumers. A related question here since this is about the intersection of internet and international is what's different about foreign commerce for consumers. This is a relatively for the most part a new thing, and does that suggest the need for different

disclosures and does it suggest any need to mandate any particular disclosures, if anybody has a thought on that. Jill?

JILL LESSER: Well, it seems to raise a different question, which is how would you mandate those disclosures. I think what the national and global nature of the medium has brought up in a number of policy contexts raising, you know, being here and I've been here at this table discussing the privacy issue sort of in the same vein, which is you certainly want to end up with a theory of baseline standards. The question is in a global environment is the government that's the I'll say initiator of those standards, or is the global business market the best initiator of those standards with this course of consumers so they have flexibility, in a lot of the portions that doesn't rely upon getting into a lot of the jurisdictional disputes that I think you discussed some this morning and have been alluded to in this discussion.

HUGH STEVENSON: Jean Ann Fox?

JEAN ANN FOX: The fact that consumers in large numbers are suddenly in the international market buying from folks under

different legal machines completely out of their reach for resources I think is going to add a whole level of difficulty to this market as more of this takes place, and it leads to the importance for the development of agreed upon rules such as OECD or guidelines for consumer protection for commerce, emphasizes the importance of the Federal Trade Commission playing a lead role in the development of those guidelines and how important it is for those to get finalized and adopted for those governments to go out and persuade other major players in the world market that they also want to abide by the OECD guidelines.

We may need to have conversation at some point of consumer disclosure requirements and to protection throughout the world, but just the sheer fact that this is not on the internet but it's international makes it more likely that consumers will feel pensive and uncomfortable shopping elsewhere when they know they're shopping elsewhere and not knowing what's going to happen which is the fact it should work out well and how important it is to have agreed upon international rules.

HUGH STEVENSON: Solveig Singleton.

SOLVEIG SINGLETON: I guess very quickly on the point of whether to what extent the rules should be different between the on-line world and the regular world, a lot websites are going to have you can order this on-line or you can fax it or you can phone us, and I think as long as that situation is obtained it would just simply be insane to have a business operating on a different set of different rules and different choice of law rules depending on whether the transaction was consummated by phone or by fax or by e-mail.

So I mean I think in terms of substantive rules, the idea that they would be different would produce some extremely strange results. In terms of thinking about international rules and what consumers will expect and want in terms of developing trust, probably most the thing that consumers will be looking for first and will be forming their attitudes toward electronic commerce will be things like familiar brand names, reputation, information that's available on news groups to them about who they want to deal with and so on.

In many cases they'll be willing to take enormous risks in order to get a product that they can't obtain elsewhere and they'll be more willing to take risks also in the context of products that are pretty cheap. So I think that for the most part consumers' expectations of what electronic commerce is going to bring them is going to be formed by the competitive process and by the normal day to day process of dealing with a merchant on-line rather than with exceptional events that will occur in some cases where there will be problems that will lead to a legal dispute.

And I guess finally in terms of an international mandate, as compared to private institutions to develop, I think eBay has developed mechanisms, credit card companies have for resolving international disputes, I think government institutions are going to begin to evolve because they'll have to address problems like fraud and they will do that, but for the most part for consumer service related issues private institutions are going to respond far more quickly and far more, in a far more consumer service oriented way than the government

institutions will, particularly since government institutions really are geographical territory institutions, and they're pretty slow, they have to be as long as they're democratic, and so I think that a lot of needs will be for new institutions rather than for new rules, and those institutions will in many ways be supplied by private institutions, the nature of which we cannot even begin to imagine now.

HUGH STEVENSON: Alan Anderson?

ALAN ANDERSON: Just to kind of leave and talk about, we should comment that the marketplace has a way of responding to situations, and then what was just mentioned is a very important point with the perspective of there are private solutions that evolve when there's a consumer need and then there's a business need, and there are private solutions being developed every day, and with what AOL is doing, what the CPA profession is doing, and from a disclosure perspective sort of point out another element of the CPA Web Trust program, it is international in scope as all of the brother and sister organizations of the profession. CPA's and chartered accountants worldwide are

offering this program, and so from the perspective of disclosure any entity that would give a seal program from the Web Trust arena would be mandated by the basic disclosures that we talked about earlier today, so there is already a private sector at least one answer to help thread a commonality of disclosures on an international basis.

DISCUSSION ON FAIR BUSINESS PRACTICES

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HUGH STEVENSON: Thank you. I think we'll turn now from disclosures to the more substantive, fair business practices and what basic other core protections one might articulate, and we could start with what may not be an easy question, which is should -- right now there are many laws in many places that prohibit deceptive and fraudulent practices, and is there any argument against covering internet and international and internet transactions similarly having a corporate protection against fraudulent deceptive practices? We don't have anyone specifically on the pro deception. I'm calling on Peter Gray. I will call on Peter Gray not because he's pro deception, but --

PETER GRAY: Thank you for the clarification I just want to make a point to follow up on a lot of the discussion today, this morning as well as this afternoon about this issue of fraud. I think there's a perception here I think wrongfully that fraud is a huge problem on the internet and growing as a huge problem of the internet.

I know that the National Consumers League did a survey in which they reported that, I forget what it was, six million consumers allegedly were victimized by credit card fraud or unauthorized use of the web, but the reality is that consumer liability is zero if reported within two days of discovery, and that since most transactions are done with credit cards this does not appear to be or has not actually been a problem to date.

Also when you have look at fraud you have to disaggregate fraud into what kind of fraud it is, because to just plainly say that this is total fraud that millions of people are being defrauded is misleading since a lot of fraud upon investigation is what's called friendly family or unauthorized use of the card, and when you look into that you find suddenly you know your son has somehow gotten hold of your credit card and has gone on a buying spree, a lot of situations like that, and if you ask people who investigated fraud, the law enforcement people and private sector people who have looked into this, you will find that there's a lot more to it than the surface figures seem to indicate.

So my point in summary on this point is that I think we got to look very carefully and not be taken in by these scare tactics that fraud is a huge problem that deters people from using the internet. There's absolutely no evidence of that, and we don't see that as a big problem in the future.

HUGH STEVENSON: Jean Ann Fox from CFA, how would you respond to that? Has the role of fraud here been overestimated or exaggerated do you think?

JEAN ANN FOX: We don't have the complaint statistics that the National Consumer League has. I would defer to Linda on that question, but I did want to follow up on the complaint about the chargebacks on credit cards or the lack of liability on credit cards. I think that one of the literal developments of the internet market is to get the liability uniform across all forms of electronic payment mechanisms consumers.

People in this country think they have the same protections when they use their debit card in a transaction as they have when use their credit card, and that is not the case. We

haven't even written any rules yet for smart cards to get cash. There are other ways on line, and one of the reasons that American consumers are so comfortable using their credit cards and are willing to buy things using their credit cards is they know they have the liability. It's a great source of comfort, it's the Linus Blanket of commerce, and we need to have the same set of rules across the other forms of electronic payment so that consumers feel comfortable shopping on the internet so they have those levels of protection.

HUGH STEVENSON: Caitlin Halligan from the New York AG's office.

CAITLIN HALLIGAN: I want to get back to your question of whether or not prohibitions against fraud and deceptive practices should apply on-line. I think they can, and they do. New York has statues much like those of the FTC which prohibit deceptive business practices and false advertising, and the New York state court has found that there's statutes that are medium neutral and that they apply to on-line transactions as well as off-line transactions.

We investigate complaints and negotiate

assurances of discontinuance, and where appropriate litigate under those statutes on a very regular basis. So I think that for a number of cases in New York alone I think the provisions is they definitely apply.

HUGH STEVENSON: Jill Lesser?

JILL LESSER: Yeah, I just want to add that regardless of whether we have statistics for that, whether there's a lot of fraud or a little fraud on the internet, I think the goal should be there's no fraud on internet, and the more we place our resource discussions both in a room like this in figuring out for example how to apply the laws that are currently on the books, which I think do work very well, but to make a good example when do New York consumer protection laws apply and how does this, how do both the business operating on-line and the consumer understand what laws apply and for example in the international environment it is not always sufficient for a company like AOL to pick a forum like Virginia, which is our home state and state laws apply, the laws of the state of Virginia apply in this case, that that won't always be enforced, so I think concentration being placed

on how we in the global medium concentrate help you folks concentrate on enforcement so that we can operate businesses and consumers can be more clear about what their rights are, but I do think very strongly and America On Line thinks that it is certainly the role of government in this area to enforce against fraud on-line, that there is no reason for the law to be different on-line than they are off.

HUGH STEVENSON: Frances Smith?

FRANCES SMITH: Just a quick statement about debit and credit cards following up on Jean Ann's comments, as a consumer group we try to educate consumers about some of the differences in the media that they use in transactions, and it seems to me that if a consumer doesn't know the difference between credit card, it usually gives you float and you pay the bill when it's due, and a debit card that immediately gets debited from your checking account, then they have a bigger problem than fraud on the internet.

So we do try to educate consumers but I think one can't look at laws and regulations as the lowest, as applying to the lowest common

denominator. I heard a regulator of another agent say once it's part of our job to protect stupid consumers. This is a literal quote from, and I'm not sure that is the role of our regulators. I think consumers do have responsibility. I think consumer groups have a responsibility to try to educate consumers, but I think if we look to laws that will protect people who probably shouldn't have a debit card or credit card or be shopping, then I think we're going to get them in more trouble.

HUGH STEVENSON: Those people I guess will stay at home. Why don't we turn it, I think we've talked on other hand that I think generally people aren't extending the fraud and deception rules to this on-line environment, we have talked through a little bit. Let's turn to something though a little different, which is cancellation rights. When there's a transaction that occurs on an on-line site for example should there, should it be either a fair business practice or should be there a mandated rule that consumers be able to cancel an on-line transaction, and if so under what circumstances should they be able to cancel an on-line transaction? Kaye Caldwell?

KAYE CALDWELL: Again I'm going to urge caution. I think that you have to be very careful when you're looking at this issue. What the consumer has already gained all the benefit of the transaction? What if the transaction is say to get access to a certain piece of information or to download a certain piece of digital, some sort of digital product like software or music or whatever that is very easily copied? What if the transaction is buying some stock that drops in price thereafter? Should they be able to cancel that? So I think you have to be very careful in that area.

HUGH STEVENSON: I hope I don't mischaracterize this. My understanding is that there's an EC directive which gives a certain period of time to cancel transactions, I believe it's seven days, and I believe there's actually some form of exception for that company for the goods to be delivered. So if we set aside the example where you have the goods delivered or the benefit of the transaction has already occurred, are there benefits or down sides to having that kind of ability to cancel? And it may be either, I suppose there may be two things behind the

thinking of such provisions. One might be to protect people who want to change their mind from certain pressures kind of thing behind or door to door cooling off provisions, and also then the other issue related to that though is cancellation because whoops, I got the wrong button.

DAVE CLAUSEN: Four seven days? Seven days seems a little long for an oops.

HUGH STEVENSON: Some are slow to react.

LISA ROSENTHAL: Should there be any period of time is the question in which a consumer can cancel.

KAYE CALDWELL: Are you looking to me or Jean Ann? Go head.

HUGH STEVENSON: If you'd like, or Jean Ann.

JEAN ANN FOX: In our comments we suggested a three-day right to cancel the transactions over a threshold amount of money except in some reasonable exceptions to that. It's my understanding that the right to cancel contracts that exist in the real world also ought to apply to the virtual world, an example if the

equity in your home is at risk. I think the problematic question is are consumers under the same pressure in on-line purchase situations as they are in a door to door sale, under the door to door sale provisions, are you all enforcing that on internet purchases?

HUGH STEVENSON: The door to door provisions?

JEAN ANN FOX: Yes.

HUGH STEVENSON: No, I don't believe --

JEAN ANN FOX: It's a purchase made in the consumer's home. I don't know, we can talk about that some other time, but I think if the purpose here is to facilitate commerce to help consumers feel comfortable, especially with a new purchase method where it is so easy to click and commit yourself to something and you might not quite realize what you had done, that it's in everyone's interest for there to be reasonable cancellation options especially for larger purchases.

HUGH STEVENSON: Kaye Caldwell?

KAYE CALDWELL: I believe there are, and I know that the new Uniform Computer Information Transaction Act actually has a

provision called, we will call that provision after your statement, we'll call that the Oops Provision, but again I think it's an area that it's very, it's essential to look at what purpose of the regulation is, and I'm always very leery of just assuming that these regulations can just be broadly applied to the internet. I think that if you look back at what the concerns are and you need to make a judgment as to whether or not it really does apply to the internet, and then beyond that if you've gone and done it in the appropriate way.

I think the concern behind the door to door selling provision is that somebody is on your doorstep and they're really pressuring you to make this purchase. That's not how the internet works. Somebody doesn't come to your doorstep. The transaction may take place in your home, but you've gone out and looked for it. So it's really completely different and you really have to think about well, how are these different, how are these alike, is this appropriate or not.

HUGH STEVENSON: How about merchandise delivery rights? This is another area where we

heard a little bit of this in Professor Mayer's talk. Obviously one issue when you order stuff is you hope it then arrives. Is there, should the consumers have rights about merchandise being delivered within a particular period of time? Obviously there's, the Commission has the telephone mail order rule in place, but I guess I'm asking more as a policy question and as applied to the international context how that could work. Dave Clausen?

DAVE CLAUSEN: I believe that again let's try and go by what's in place already. Is there, first question is there a mechanism for resolution today and can it be enforced. Second, let's don't unfairly penalize or yolk the internet because it's new. So my first question is in terms of mail order and shipping and delivery, I would argue from the professor's study those problems are inherent in ordering anything overseas.

If you've ever bought something in another country and had to have it shipped you'd have these problem. It's not the fact that the internet is here that all of a sudden the problem is there. So take the E away from it, it's just

business. Let's take a look at the fact that there is a mechanism, existing law that applies to business that in that case shipping goods border to border, that applicable law should in fact apply. It's already in existence and there's no difference simply because it's the internet.

HUGH STEVENSON: Jill Lesser?

JILL LESSER: I think one of the reasons why we're having trouble answering these questions is because it's very difficult to say should there be this right or that right when we're talking across circumstances, but one of the things that we've focused on at AOL and we've gotten a lot of feedback from our members on is essentially the consumer's right to know, and I don't mean that to like, you know, the right to know from a government mandated standpoint, but really in the marketplace.

So if our goal is ultimately to make sure consumers get comfortable on-line and are protected, then my goal would be to say okay, in this context of whatever I'm selling at this particular moment, what cancellation policy seems to make sense, what shipping policy for example.

If I'm shipping valuable product obviously I think I should be guaranteeing. My gut reaction I should be able to say how much insurance do you want or what kinds of guarantees should I be able to give you based on how much you're spending for this product, but it seems to me the most important thing for the consumer to know is, the consumer to have is information about that.

So up front, which is I think part of the basis for the certified merchant program, is to say we want all of our consumers to know up front what the cancellation policy is, what the return policy is, what the shipping practices are that customer more than trying to standardize all of those items across all types of transactions trying to figure out some sort of a way to make sure that the consumer has a way to understand each of those aspects of the transaction of the on-line experience.

HUGH STEVENSON: So you're saying you don't in more standardizing disclosures that people in your program would standardize any particular practice that they're disclosing?

JILL LESSER: That's right. That's where our focus has been.

HUGH STEVENSON: Haywood Torrence from Bell Atlantic.

HAYWOOD TORRENCE: I think what my own experience has been is there is probably a lot more disclosure with regard to shipping in the on-line world than there is in the off-line world. One of the I think advantages of the internet which I've come to value as someone who does a lot of purchasing on line is the fact that many sites and many organizations with which I do business have a tracking page and will give you a tracking number relatively soon after your purchase, and you can go to that tracking page which ties into the shipping company's page and they can tell you where your package is, whether it is in Memphis or whether it is at the loading dock in Waldorf, Maryland or whether it is on the truck on its way to 1300 I Street, and that's something that in the off-line word I think is virtually impossible without a great deal of trouble, and so I do think that it is in fact a competitive advantage for providers to offer that kind of service because they will get business. They will certainly get my business assuming their prices are competitive. They might even be

able to extract a few more pennies out of me because they do offer that tracking than otherwise. I think that we need to allow market mechanisms to work rather than try to standardize everyone into the same mold.

DISCUSSION ON CONSUMER REDRESS

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HUGH STEVENSON: Let's shift topics now from what rights or protections or fair business practices we already focused on to what the redress for consumers should be. Is there, should consumers have some vehicle for effective redress in these cross border e-commerce transactions, internet transactions? I guess those who are against effective redress speak out now. That tells us something. That was admittedly the easier one. Michelle, okay.

MICHELLE TURNER: I think if I could add

by looking at what are these other out of the box ideas and venture, might help them in this arena that are unique to the internet.

HUGH STEVENSON: And as long as we have effective redress does it, is having it in a form for example you're suggesting arbitration, is there binding arbitration in your instance.

MICHELLE TURNER: It is binding arbitration.

HUGH STEVENSON: Okay. Well, one question is what would be wrong with binding arbitration in this circumstance? Why not have themes for effective consumer redress in the context of binding arbitration or is it necessary to reserve a right to judicial recourse for consumers in this instance? Jean Ann?

JEAN ANN FOX: We think the arbitration is helpful and useful, but it should not be required. Consumers should have recourse through the court system where laws have to be applied and that there's growing concern about imposition of inventory arbitration, like in some cases the fact that it doesn't necessarily apply, have to apply laws, and because the outcomes are not necessarily public, you're seeing resistance to

mandatory arbitration in the financial product area. I noticed in reading automotive news that the car dealers are not happy about the thought of having mandatory arbitration with the manufacturers. I figure if it's good enough for the car dealers it's probably good enough for consumers.

HUGH STEVENSON: Let's break out though mandatory arbitration in a domestic context. I think despite what Brad Handler suggested earlier I think probably you could enforce a Manhattan judgment in the Bronx, but I have no experience with that. How about the example of enforcing the Manhattan judgment in Australia or Germany or El Salvador, and is that really a right that needs to be protected or is it an effective right? Caitlin Halligan?

CAITLIN HALLIGAN: I can speak to the fact that it's difficult to enforce cross border. I think that that doesn't necessarily mean that resort to the courts is an inappropriate mechanism for reasons one of the things that it points to is the need for continued and better cooperation across, I think that that's really assistance towards making the

courts a viable means of redress simply.

HUGH STEVENSON: Dave Clausen?

DAVE CLAUSEN: I would hope that if it comes down to waiting for some sort of mandate

On the other hand if we have to sort of, you know, leave judicial means to the end as the only viable objection I think it will be a long time before we see any consumer benefit from that.

HUGH STEVENSON: Jean Ann Fox?

JEAN ANN FOX: I'm sorry, I didn't take it back down.

HUGH STEVENSON: Okay. Frances Smith.

FRANCES SMITH: I think the point made about third party negotiators and dispute resolution of third parties I think is a very important one, but in reading some of the comments were submitted to the FTC in relation to this e-commerce in the global marketplace, I was intrigued and realized that of course that all the credit card companies provide dispute resolution processes. Visa, MasterCard, American Express if you have a dispute, you have a chargeback, the dispute, the financial institutions are contractually bound to abide by the guidelines of the merchants that deal with the financial institutions. So when it's a question of the financial institution, the card issuer's financial institution, the customer's financial institution having a problem with the

merchant's financial institution, then they usually settle the dispute. If not I think the, in this case of Visa from reading it, Visa is the final arbiter of settling the dispute, so they promoted that in their comments as because the complexities of international law are so difficult to resolve, this is the way that the private sector has already dealt with how to resolve many disputes, and I think that's an example that is there. We're not waiting for it to happen. So that's my point.

HUGH STEVENSON: Solveig Singleton?

SOLVEIG SINGLETON: One advantage that the private sector will have in developing new institutions over the public sector is that the private sector can specialize to a high degree in disputes say relating to, you know, as with the case of eBay consumer to consumer transactions as in the case of say another imaginary arbitration forum, maybe Aquarium Fish Magazine could resolve disputes about highly specialized equipment, that kind of thing, where first of all from the standpoint of a prosecutor or a federal agency or an international agency, the dispute won't be worth their time unless it's occurring on a large

scale, and also they just won't have the specialized tools, they won't have expert knowledge immediately after their disposal to help resolve that dispute. So there are a lot of niches there that I think will be filled with private institutions.

HUGH STEVENSON: One issue related to right of redress or access to redress or proceedings for redress is the choice of law and actually choice of law and choice of forum. Choice of law, we saw in a survey that relatively few sites right now disclose this, although I believe as Lisa mentioned that both the Trans-Atlantic Consumer Dialogue and the Trans-Atlantic Business Dialogue had indicated in some context that it might be a good idea for sites to disclose the law that applies to the transaction merchants I believe apply to the transaction. Does anyone have thoughts on whether that is something that would be I guess a disclosure but would be a helpful disclosure, necessary disclosure, crucial disclosure, and should it be a binding disclosure if it's part of the contract, the terms that are in the, on the website? Dave Clausen?

DAVE CLAUSEN: In observing consumer behavior, this is probably a minimal issue in most purchases in the on-line environment. I think is it helpful to disclose that? Some people will say there's never enough information. Is it a major cause of concern that disclosure of, you know, which jurisdiction? It's not impeding or anything, so I think even if it was put out there, again we're going to start to add up how much is enough. I'd rather see other issues disclosed before that. It has to be looked at very carefully.

HUGH STEVENSON: Jean Ann Fox.

JEAN ANN FOX: We have taken the position that beyond the disclosure idea that the law that should apply to transactions is the law of the jurisdiction where consumer lives because consumers are most likely to be familiar with the right of transaction, and also to discourage the race to the bottom for first time businesses to locate places where there were nonexistent consumer protections absent having that decided by the OECD and then adopted by the member countries, but you know, before that it's implemented or takes place. I think it would be

useful and helpful to disclose this. It might not be important to consumers until they have a problem and the need to know that, but I think it would inform a decision as to whether you want to buy from a merchant who doesn't recognize American consumer protection.

HUGH STEVENSON: Would it be your position that if there was a disclosure that consumers nevertheless should not be able to contract away the right to sue in their home state or forum, or would you say the consumer should be able to -- in other words we had the example I think Professor Mayer had the provision in there that said the courts of Toulouse are the ones that are competent to hear any dispute of the transaction. Is that something that should be --

JEAN ANN FOX: I don't see how a consumer can make an informed decision that they want to be bound by the court of Toulouse when they don't know what that means. I don't know.

HUGH STEVENSON: Okay. Those in favor of the court of Toulouse?

HAYWOOD TORRENCE: Without having any particular interest in Toulouse and its courts,

what I would say is that I do think there are some practical matters and problems with the proposition that Jean Ann puts forward. I would ask for example if there are regulations regarding advertising, Jean Ann, that would lead to some sort of liability, how is a merchant to post some kind of information on the web if indeed it has to conform to the advertising requirements of every jurisdiction, many of which may be contradictory? How is that to happen?

HUGH STEVENSON: I'm sorry, I didn't focus the question quite well enough. If we're focusing on, for example obviously there may be some issues that we'll talk about in great depth tomorrow about what laws should apply, but one question here is whether contractually consumers should effectively be able to give away their right to sue in their home state and whether it's appropriate for consumers who agree yes, I will be able to contract, only be able to in a distant forum.

HAYWOOD TORRENCE: I think consumers ought to be empowered to make whatever decisions they feel are in their best interest.

HUGH STEVENSON: Jill Lesser, AOL.

JILL LESSER: I think we have to balance the interests of consumers and basically the interests of businesses in terms of the expense of doing business and not having some level of clarity, and I think that we need to look at examples which are not obviously at my fingertips right now in the off-line world where choice of law, choice of forum clauses appear in contracts all the time and have some faith frankly in consumers to be able to make those determinations because it is simply not realistic to have a business subjected to any court in any of the application of any law around the world and still be able to, you know, make the decisions one needs to make, and frankly as a public company the disclosure one needs to be able to make about the potential for liabilities as you run a business. It's just not a possible way of running a business, so I think that there's a balancing discussion that we have to have, but we do have to have faith in consumers that these kinds of clauses appear all the time in contracts and we all sign them and sort of blow by them.

HUGH STEVENSON: Caitlin Halligan from

New York.

CAITLIN HALLIGAN: I think Jill is right that there's a general sensibility that consumers to be permitted enter into and signing contracts about form selection, but I think that there's also a sense and I think this comes through in some of the case files I've look at form selection where the purpose of a form selection clause is simply to thwart any effective redress that that is not permissible, so I think that the question you're asking is a little difficult because you're sort of asking the question why, and I think that maybe it's more fact than circumstances dependent on that.

HUGH STEVENSON: Kaye Caldwell.

KAYE CALDWELL: I think we need to also look at this a little bit more from the consumer's point of view and realize that perhaps I may not like the idea that I'm going to have to pursue some sort of claim against this company in Toulouse. On the other hand perhaps this is something that I want to buy and that I need for some particular reason, and if my choice is either I can't buy it at all or I'm going to have to live with this particular term, that's

something I think that we need to look at before we go to France and say all your merchants have to be subject to the laws of Louisiana.

CLOSING ISSUES

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HUGH STEVENSON: We are almost out of time, and I would like to offer people a chance to any particular closing thoughts on issues we have perhaps not covered that they were hoping or expecting that we would address. I know that Solveig also has her card up. Go right ahead.

SOLVEIG SINGLETON: Very quickly on the choice of law issue, to turn to the big picture for a second, choice of law rules are sort of similar between substance and process rules. They're not like evidence rules clearly in the realm of process, but nevertheless they have their own sort of procedural integrities related to the function of the courts and enforcement and fundamental fairness, control of risks, certainty for both consumers and business, and I think that yes, as you get a new technology you are going to get some circumstances where those choice of law rules in their natural operations has some strange substantive results, but nevertheless it's a very bad idea to start thinking about manipulating process rules in order to guarantee a certain substantive outcome. It just goes a

long way in the wrong direction. If you do have jurisdictions around the world where say their routine governing fraud is not adequate, that's a substantive problem that should be addressed at a substantive level rather than something that you begin to poke at by manipulating just the call units.

HUGH STEVENSON: What would it mean to address it at the substantive level in your opinion?

SOLVEIG SINGLETON: Basically perhaps by having law enforcement in this country set up a dialogue with their law enforcement, maybe having government or private institutions in this country issue warnings about doing business with that country, but somehow insofar as this is consistent with respect to other countries' sovereignties, having that at the diplomatic level, people tell them, you know, nobody is going to want to do business with you if you have this fanatically legal regime maybe somewhere through China on intellectual property, so I mean I think there's lots of ways you can pursue that at a substantive level. I guess I'm very concerned here that people should start to think

that choice of law rules are something you can sort of change around in different contexts as we need them, you know, depending on what the law is in order to get the substantive outcome you want.

HUGH STEVENSON: Any other thoughts?

Okay. Thank you all very much. I appreciate our panelists and their input here. We'll take a short break and then at 5:00 we're back here for remarks by David Aaron, undersecretary for the international trade administration. Thank you.

(Recess taken at 4:50 p.m. Seminar resumed at 5:09 p.m.)

HUGH STEVENSON: Okay, I think we're ready to get started again. Some of the industry groups in particular have been counseling great flexibility, and so I take a page from that book, we're switching the program around a little bit and we're going to hear first from Commissioner Swindle and Commissioner Thompson, commissioners at the Federal Trade Commission, to offer their thoughts on this intersection between internet and international. We start with Commissioner Swindle.

COMMISSIONER SWINDLE: I would not begin

to try to offer expert advice to the groups or the represented groups who have been talking today. I caught probably the last couple of hours and I tried to listen via television up in my office on the internal network here and I found that listening in one here to one conversation and to another is far beyond my poor capacities these days to keep up with, but I was rather encouraged by the conversations that I heard this afternoon.

Even in some cases where I might disagree with what was said, it was obvious that the people making the statements were very sincere in their comments and well, thought it through quite well, but just some in listening some thoughts that ran through my mind, I had the privilege or honor a number of years ago to work

In other words, when you try to avoid failure or the inadequacies of the marketplace typically you will do more damage and harm, at least in my mind. I was in Russia a few years ago in the late 80's as Mr. Gorbachev suggested that glasnost and perestrojka I believe it was called was the way to go and he was encouraging all of his bureaucrats down the channel -- would you like to pause? Why don't you go ahead. No, I can stop right here. I have no organized comments. I was just killing time. I had some great stories that will come later. We can dance, too.

ROBERT PITOFSKY: Flexible as always. Why don't we go back to our original game plan here and let me introduce David Aaron, undersecretary of commerce for international trade. As many of you know he's the head of the International Trade Administration and is responsible for formulating and providing leadership for U.S. trade policy. Before he came back to the United States to the Department of Commerce he was secretary of international trade and the U.S. permanent representative to the OECD.

He has been responsible for dealing with this very sticky question of international consensus on privacy questions and the on-line universe. He's our leading spokesman in that area representing this country in international negotiations, and it's a great pleasure for me to welcome him here this afternoon.

COMMISSIONER AARON: Shall I speak from here or --

ROBERT PITOFSKY: Yeah, that's fine. That's fine.

COMMISSIONER AARON: Do I have to push any button here or is this automatic? Well,

conclusions about on-line consumer protection. First, it will be difficult to reach anything approaching a worldwide consensus on consumer protection issues. Secondly, it's vitally important that we do so, because otherwise electronic commerce will be unlikely to realize it's full potential.

As you heard from Secretary Daley and other speakers today, that potential is virtually unlimited. More correctly it is limited by one overriding factor, consumer confidence. In the absence of the tangible trappings of in-person consumer transactions, showroom salespeople, floor models and so forth, consumers have to have the trust that they will get value for their money and that the information they provide will not be exploited to their detriment.

The issue of data privacy is further along towards international resolution than other areas of on-line consumer protection, so perhaps it would be instructive for us to look at that as we seek to develop the global consensus that has to be our goal in the other areas. Data privacy protection is an essential to the future of electronic commerce as are other consumer

safeguards. People simply will not put their personal information on the internet until they receive some guarantee of confidentiality.

The European Union has arrived at a solution to the privacy issue, at the directive on data protection which became effective last October. The directive is a comprehensive regulatory program that controls every aspect of personal data collection and distribution. Not just the internet, not just electronic, but in every walk of life, including the creation and establishment of data privacy authorities or czars in each country.

The United States has quite a different approach to data privacy protection. We have evaluated in fact in the 1980's the concept of a comprehensive approach and it was rejected largely out of concerns that creating such an overriding organization and authority could actually lead to invasions of privacy. So we have preferred to target laws on individual privacy problems. These laws are supplemented by industry self-regulatory codes backed up by the Federal Trade Commission and state fair trade laws.

The EU directive required the data flow be blocked to countries deemed not to provide adequate privacy protection, and the European Union is now deciding whether the U.S. regime meets the adequacy standard. In our judgment we think our system is more than adequate to protect personal privacy. In fact, some of our laws, particularly in the fair credit reporting area, surpass European standards. Also in terms of the protection of personal privacy from government intrusion. But to Europeans our system is suspect. In particular they've had a difficult time understanding our reliance on industry self-regulation.

In an effort to bridge the gap we began a dialogue with the European Commission about a year and a half ago. We agreed at the outset on two mutual goals, enhancing privacy for people on both sides of the Atlantic, and on maintaining the flow of personal data across the Atlantic. The first step was prepare the directive with the principles on which the United States privacy protections are based and we concluded that they are 90 percent compatible.

After making some progress on our

discussions on this broader, more conceptual level we advanced a proposal to bridge our different systems by creating a set of safe harbor principles for U.S. companies to follow. They're based on the OECD principles on privacy, on principles underpinning U.S. privacy protection, and ultimately also on the principles underlying the European directives.

Refinement of these principles then became the focus of our negotiations, and an agreement on language of the principles as well as the frequently asked questions that would elaborate the implementation and application of these principles and the procedures to be followed in the case of complaints all became the goal of these negotiations. Now each organization that would subscribe to the safe

to the information, to one's own information, enforcement, onward transfer of the information, security, and data integrity. An early and essential breakthrough in these negotiations was the European Commission acceptance of the concept of self-regulation as the basis of safe harbor principles.

Companies could thus certify to their customers and to in effect the European Union and the Department of Commerce their adherence to the principles, and the private sector could administer dispute resolution and sanction and provide for the requisite verification. Despite acceptance of this concept, throughout the negotiations the EU nonetheless had some difficulty in accepting the reality of what self-regulation means.

We have repeatedly had to elaborate our position on enforcement to meet EU questions. In other areas we've sought and found mutually acceptable solutions. I think it's fair to say that we have now reached agreement on all f the central privacy issues. However, implementation and procedural isslemm9l pisataataa=lemÚhe i»ncÆsitffibl
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will be bound by these principles and by the frequently asked questions which elaborate them, and the issue of reasonable transition period, but these issues can be resolved. We may be able to initial an agreement on June 21, which is the date of the US/EU summit.

Even then this issue as a whole, the issue of data privacy in an electronic and on-line world, can't be called settled because it will have to be revisited each time there is major changes in technology, major changes in business practices that raise new privacy issues. Elsewhere in the world about 25 countries have adopted Omnibus legislation comparable to the European Union's directive. Hong Kong, New Zealand, Taiwan are examples.

Japan on the other hand has taken the self-regulatory approach. Canada now has a uniform though unofficial national standard which we understand they plan to formalize into a law. The data privacy issue gives you some idea of what the U.S. government will face when attempting to reach international consensus. There are other on-line consumer protection issues.

One issue, which is privacy, one entity, the European Union, albeit made up of fifteen member states, eighteen months of negotiation and we're still counting. All of the consumer protection issues that are proving so difficult domestically will be magnified by the legal and cultural differences among countries. I think this was the most fundamental question that we faced in the course of the entire negotiations. Different historical experiences, different sets of analogies, a different notion of what was sensitive information on the part of individuals, different legal systems. All of these have been major obstacles that had to be overcome in the course of our negotiations.

In the other areas of consumer protection, if the consumer purchases on-line from a foreign business and a dispute arises, there will be the question of which country's laws apply and which country does the consumer seek redress, what constitutes fraud or deceptive business practices under one country's laws might be perfectly legal and acceptable under another's. Remedies that are taken for granted in one country may be entirely lacking in

another.

The U.S. government's policy has been that electronic commerce development should be led by the private sector, but that the government must work with the private sector in order to set parameters for its growth.

Development of international on-line consumer protection is one area where the government must involve itself. It's equally clear that given the given the number of jurisdictions there will be no single set and the number of complexity by the way of the issues involved, there will be no single set of negotiations leading to a universal agreement on consumer protections.

Rather, it makes sense to work towards the international consensus that essentially may have to skirt domestic legal systems, many indisparate as they would be. Wrangles over whether a disputed transaction should be adjudicated in the country of the seller or the country of the buyer would bring electronic commerce to a halt, and in the case of privacy protection and a privacy agreement with the European Union, we are making explicit the fact that this arrangement that we have with the

Europeans does not touch on the question of jurisdiction.

In other words, it does not constitute a precedent for jurisdiction or a nonprecedent for jurisdiction. Jurisdiction is a separate issue that has to be addressed elsewhere, and perhaps in many different contents. It's likely that any such consensus on consumer protection will be developed punitively using all the available international channels. There are a number of vehicles for the discussion of such principles in the private and public sector.

For instance, several international groups with both public and private memberships are now discussing on-line consumer protections. Among them are the Trans-Atlantic Business Dialogue, the Trans-Atlantic Consumer Dialogue, and the Global Business Dialogue On Electronic Commerce. The Trans-Atlantic Business Dialogue, or TABD, is a colloquy involving business leaders and government representatives from the United States and Europe. The TABD works with both the United States and EU governments to develop trade policy recommendations that will boost trans-Atlantic trade and investment

opportunities.

This past November the TABD released an electronic commerce issue paper and recommendation. The paper points out the critical need for creating a stable environment to conduct on-line transactions. The Trans-Atlantic Consumer Dialogue is similar to the TABD but combines consumer interests and respective governments. At its most recent meeting in April the TACD produced a list of recommendations for protecting consumers in electronic transactions.

The organization supports the establishment of on-line standards equivalent to those now offered to consumers in the off-line world. There are equivalent organizations in other parts of the world such as the Asia Pacific Economic Cooperation, or APEC, and its affiliated business groups. The Commerce Department is working to advance discussion of electronic commerce issues including consumer protection in that important forum.

Other forums exist for the Americans such as the Free Trade for the Americas and Africa and subsets of various regional as well.

One important worldwide forum is the Global Business Dialogue on electronic commerce. It is a consortium of world industry leaders who cooperate with national governments to remove barriers to global communications and electronic commerce. The group supports a framework of market driven policies to promote electronic commerce. It has established working groups on consumer confidence and jurisdiction.

In addition, the OECD committee on consumer protection has been working for more than a year on drafting guidelines for electronic transactions. The committee hopes to complete its work by the end of this year. These guidelines could be enormously helpful in fostering international consensus just as the OECD privacy guidelines have become the international benchmark for privacy and have been key to bridging the gap between the United States and the European Union's privacy dreams.

If the OECD on-line consumer protection guidelines are to be similarly effective in helping develop a consensus on other consumer protection issues, they must be as high level and as culturally and technically neutral. The

drafters must resist all temptation to include local interest of any kind, and that is no easy. Other avenues undoubtedly will be pursued and other lines of communications will bear fruit in the development of a consensus as time goes on. I won't speculate on it.

I'll similarly say that in conclusion consumer protection is a worthwhile goal in its own right, but in the case of electronic commerce, insuring consumers they can place their trust in the internet transaction is a critically important step in its development. Absence of such trust will at best stump and at worst destroy electronic commerce, and that will cost consumers a world of infinite variety. Thank you very much.

HUGH STEVENSON: Well, I think we can then return to Commissioner Swindle.

COMMISSIONER SWINDLE: Thank you very much commissioner. I was about to, I'm just going to tell stories. Don't take any notes on anything I'm going to say because none of it's worth writing down. Certainly it's worth thinking about or I wouldn't be saying it. I was about to say I was in Russia back in the late

80's, '89 I think it was, '89 and '90 and '91, and I was with a couple friends, we went over there with the ideas that we would start some businesses, and it was a fascinating experience because it was before the Soviet Union fell.

Mr. Gorbachev expressed his perestrojka and glasnost policies, and he had told his bureaucrats throughout the system to help the people privatize and get into business, entrepreneurship would reign. There was a huge group of people between Mr. Gorbachev and those people down at the bottom of the triangle that included the timid, the greedy, the intimidated. There were very few risk takers except those who would later become known as the Russian Mafia. They do take risks over there, and the intimidation is well understood.

In the course of our being over there we had occasion to meet some incredible. I made about six or seven trips as I recall spending a total of several weeks, and we talked to them, they were very curious about what democracy was all about because that was sort of the buzz and they were scared to death of the prospects of something other than what they, because all of

them had literally, I mean there was no one, very few people arrive that knew anything other than communism, and we would start telling them of different things.

I remember the trauma that set in on a group of them as I took old calculator out and showed them how we buy a house, by consumers taking risks and going into enormous debt that none of us can comprehend and we seem to be able to pay it off if we live long enough, and I showed them the way we would buy a house in Russia and how much it would cost in rubles, and you know, they go in, they sort of glaze over and turn ashen white saying well, we can't handle that.

We talked about the inefficiency of democracies, the waste that's in it, the fact it's a target rich environment for all the scam artists in the world, we heard some conservation on the day. We talked a lot about unknown consequences or unknown outcomes and it was very disturbing to them, because you know, without this assured existence what I was talking about when I started my comments about the farm program was going to assure that they had no failures, by

the way I just looked over the corner of my eye and I saw Commissioner Thompson, and we were supposed to tell you in unison that nothing we say here has anything to do with the opinions of the Federal Trade Commission.

I don't want to delude anyone into thinking otherwise, but we talked about how competition works in the private sector in a free enterprise system, and that terrified them, and then we talked a little bit about how the good things of democracy and freedom, how people are informed and there's this wealth of information, some of it not always right or accurate. We talked about opportunity and the old expression of doing your own thing.

They liked that, and we talked about the rewards for risk taking and the good side of competition, how it tends to just keep evolving and bubbling over with new ideas, even when businesses move out of our country because somebody can do it cheaper, something comes along to take its place. It's almost like magic. In listening to the conversations today a lot of conversation depicting the ingenuity of industry, the fact that the marketplace does work, the fact

that there are people out here who do severe damage to a lot of consumers who don't catch up with the situation.

I find it a little bit interesting, somewhat of a dichotomy where we're talking about e-commerce which requires that the person have a computer, and I didn't even know how to operate one of the darned things not so long ago, so it does take a little bit of mental skills to get onto this thing, so we're talking about a certain subset of our society that perhaps is a little bit cut above the average, although judging from some of the messages that I see on my e-mail I would question that at least among some of my friends, but in thinking about the internet I couldn't help but ask the question, and it was asked several times, is anything really different in the world of commerce because of the internet.

First and foremost yes, the answer is speed, the enormity of it all, but that enormity is not a bad thing and speed certainly is not a bad thing because people are flocking to the concept of doing business, participating in commerce, satisfying their demands by reaching

out and grabbing every ring that comes along because they want to get on it, they want to play, and the only reason they do this is because there is a high degree of satisfaction, albeit some do get burned through the inefficiencies and inadequacies of it all.

Firms are acting on their own best interests or for their own best interests, that hasn't changed. They're out to make money, profit. Bad firms do fail in the system, bad actors certainly abound. I suspect back when Thomas Payne was handing out his little flyer saying you know, insurrection, we're going to change the world, there were people at the same time were trying to sell something, little flyers, and they were ripping somebody off in the process because they had nothing to sell but they had great promises.

So we've gone through a tremendous evolution in this business of communications and information. That's all that's this really is. It's just another way of doing things. FTC laws exist. They haven't changed appreciably, and they still work, and consumers are still taking risks. It's a risk, I must tell you my first

experience in buying a book on Amazon, I'll give you a little commercial here, I bought a dozen copies of a book that I particularly wanted, and I got down to that point where I had gone through that little nifty shopping cart of whatever they call it and I got to that point where I put my credit card in, you know, MasterCard, zip, zip, zip, and then says enter, and I had a hard time punching that button. I couldn't quite get to it, and then finally I hit it and I was nervous for about an hour, and then I noticed that they gave me a little feedback there and it said hey, we got your order, we got your credit card number, and it's going to work.

Sure enough, three days later I had all these books, so these things about commerce and business are basic, and the laws that apply to them and the good and the bad guys and the quality that can be had and the lousy products that can be had, all that stuff has not appreciably changed with the speed it has, and we have a different way of doing it. The bottom line, and I think we've heard that said here several times today, the marketplace works. Adam Smith had it right, and then one of his cohorts

back in those days, Ronald Reagan lived to be a lot of years older and he had it right and our Founding Fathers had it right, and my Milton Friedman had it right and a lot of others had it right and they basically said that the best government we can have is that which governs least, I think that has a lot to do with what freedom and democracy are all about.

Businesses will if we let them act in their own self interests, they will do some harm but they will do incredible good because there will be so many of them they will compete, and the minute the bad ones rise to the top the good ones will come along and undercut them if they aren't providing the privacy policies which the consumer world, the customers demand, if they do demand it. Then somebody will come along and offer it, that privacy policy, offering the same product, and guess what. The guy who doesn't, he's not going to be around very long or he's going to change and start complying with the consumers' demand.

Consumers contrary to some what might think are not fools. They are discriminating. The FTC is not in the business of protected

stupid as somebody suggested, at least they suggested that, but that's not what government's role is. There are always going to be people who will come up short, will be betrayed, will be deceived, and that's why we have laws to deal with those unique circumstances where we do have people who violate standards of conduct and ethical practices and good business practice and just basic integrity and Honesty and we have a way to get through them.

Consumers expect to be satisfied otherwise except for the complete fools, and there may be some, they're not going to spend their money foolishly. They're going to make wise decisions by and large as a universe. We have the law enforcement tools available to us. I contend that the FTC, and I'm not a lawyer, but I've been here a year and a half and I've observed the things we do, and sometimes the laws we're dealing with were written in 1914, is that right, Mr. Chairman? And we're flying to the superworld of cyber space, and lo and behold they work.

And as someone mentioned, we've gone after some eighty cases this year I think in

internet cases alone. The system works. Competition works. It's prevailed through all the efforts of us to regulate it and try to curb bad practices, which is appropriate that we do, but we must guard against going too far. We must guard against trying to protect every sole, trying to correct every inefficiency, every impurity, every mistake, every possible little trap out there that will catch somebody who unwittingly walks in, and that takes me in conclusion back to Russia.

In the Soviet Union for fifty plus years -- no, seventh plus years as I recall it was foolproof. I often remember there's no crime in Russia, there is no unemployment in Russia, there are no failures in Russia, and lo and behold when we got to the end of the book there were no successes in Russia. Freedom and democracy work, and I think when we go about contemplating this new world that we're in, this incredible tool that we have to have commerce flowing so freely, let's be careful that we don't try to assure that it's perfect. Thank you very much. I was watching the audience today and everybody was awake, alert, and seemingly enjoyed

the presentations that I heard, it was very, and for those of you who participated thank you very much.

COMMISSIONER THOMPSON: Well, first welcome. I could give you the normal caveat that I don't speak for the rest of the commission, let alone these two folks to my right, but I for one am very excited about having all of you here and participating. I think this is a very significant event in that I look around the room and I looked around the room all day today and was struck by the diversity of people and viewpoints who come here to talk about what the future is going to be, and that's very exciting because there are few opportunities we have out

heard today that industry is doing, and I'm actually happy to hear there's substantial progress that competition is bringing in many areas.

There are still problems in consumer space and cyber space, and it's important to recognize unlike a lot of different areas that we deal with, there is still a panacea of laws and regulations that purpose to govern the important relationships between buyers and sellers of goods. That presents a lot of very interesting questions for all of us. How do we look beyond

Now, tomorrow we'll have a series of panels that focus on some of these laws and the international and domestic mechanisms that provide consumers with protections. The only thing I would ask is that tonight that all of you reflect on the interesting ideas you've heard today, and recognizing that there are a range of valid viewpoints on these subjects that you return with the willingness to be forward thinking and creative, because I think that energy will enable us all to begin to address the complex issues that we discussed today, and more importantly that tomorrow we can begin to discuss what works. Thank you very much for coming, and we'll see you tomorrow.

DAVID MEDINE: I'm going to briefly summarize the breakout session on authentication. Authentication is the process by which merchants and consumers can confirm each other's identity. This holds tremendous promise in promoting commerce between unknown businesses and likewise unknown consumers on the internet. We heard an example of a bakery in Germany that wanted to do business, and there's no way of knowing if it's a legitimate bakery, if the

quality of the pastries are very good, but some method of authentication might help establish that it is a bakery and in fact its croissants are excellent.

Likewise the bakery needs to know that the person they're dealing with on the other end of the internet is a consumer who has a valid bank account or credit card number. An authentication can go far in establishing that as well. We had a lively discussion with representatives from the Commerce Department, Consumers Union, National Consumer Law Group Centers, Visa, Verisign, Intel, and the U.S. National Biometrics Center, and I was just saying the debate to confirm what Commissioner Thompson just said, which is we had a diversity of viewpoints.

We first focused on technology where we heard from one speaker that an encryption model using public and private keys offered strong protection and assurance of identities. We then heard that very system was vulnerable and insecure and it couldn't be relied on to establish identities of both merchants and consumers. We also heard that Biometrics is in

the process of using fingerprints, voice scan, hand geometry was both vulnerable and offered some protections depending on how it was used.

So we had a diversity of viewpoints even as we were discussing the basics of the technology. We then moved into the legal structure that should apply to authentication and it had equally divergent viewpoints on, some of them would require, we saw nonrepudiations, which is that if you offer your digital signature you're on the hook even if maybe someone else is misusing your digital signature. Others would prefer the model of repudiation, very similar to that used with credit cards in this country, which will allow you to dispute whether you in fact were the person that submitted that digital signature.

There is good news. There may not be a rush to resolve these issues tomorrow. What we learned is that the vast majority of international commerce right now is business to business where the goal of the United States is to try to remove restrictions and allow the free flow of trade and allow businesses to negotiate with each other at arm's length to establish the

appropriate rules. Yet with the beginning of the growth of the international electronic commerce for consumers, it is important to engage in a debate about what the rules of the road ought to be, should consumers be liable for transactions that go bad, should certifying authorities who certify both the merchant and consumer be on the hook, or should the merchant, and the question there is what's the best way to establish incentives for the best and most secure and robust systems. The session provided a good opportunity for both consumer advocates and industry members to begin that debate, and we hope that debate will continue over time. Thank you.

HUGH STEVENSON: And before we conclude then I'll try to summarize briefly the breakout session on core protections for consumers, and again here there was also quite a diversity of opinion, and especially I think on the more particular detail we got, I think that there was not consensus, at least a greater agreement at sort of a higher level of generality about what the overriding goals should be in increasing consumer confidence and finding effective ways to

enable consumers to contact a company to be able to communicate about complaints if they have them, to be able to in the case of law enforcement locate companies, although there was some disagreement about that, and some ability for people to know something about, and this seems to pick up the theme I guess in the authentication session, some interest in consumers knowing who they're dealing with and where they are.

I think though that there was much less agreement as to what how one might operationalize those principles and how effectively that might happen as to whether it should be set out in greater detail and in whether it should be mandated by law, and there are different, the consumer groups and the industry groups, people I think had somewhat different views on how that should play out. The industry groups in particular highlighted the need for flexibility and the issue of the problems of mandating certain kinds of disclosure provisions that then might either be too confining or might be redundant without changes in technology or by changes in what competition brought to the market

here.

We talked both about on-line disclosure, about businesses generally and disclosures about contractual terms themselves. I think there again at the higher level of generalities at least a general principle, the idea of providing material relevant information and providing before someone enters into a transaction what was I would say generally seen as an unreasonable objective about how one should operationalize that and whether there is any need for regulation. There is a more difficult question I think where there was greater diversity of view.

We also talked about substantive consumer protections for a little while. On one issue I would say that there was no one in favor of fraud, international or otherwise. You may all have attended David's session of authentication but there was, no one volunteering. So there did seem to be some consensus that effective prescriptions against fraud should be there and as distinguished perhaps from a little more regulatory provisions if you will to which I would say there's less

consensus, the sort of as Commissioner Swindle said the good guys and bad guys.

There was some I would say optimistically, and the interesting thing about summarizing a session that a lot you sitting here attended is that afterwards you come up and say that wasn't what happened. I think that it's fair to say, I hope it's fair to say there was also some consensus that it was reasonable to obtain for some effective means of consumer redress in some sense for these kinds of transactions, and again when trying to operationalize that principle there was less agreement. We talked a little bit for example about whether arbitration should be binding or not or whether there should be a right to judicial recourse, an issue which I think has resonance both in the domestic and transnational context.

We also talked a little bit previewing choice of law sessions about whether it's appropriate for consumers to be able to contract away their choice of forum in which they might bring legal disputes, and so we discussed that issue as well. Those were the main issues that

we addressed and I think we will then pick up tomorrow with Commissioner Thompson with the choice of law jurisdiction session. We're hoping to start at 9:00 tomorrow morning, and so we look forward to seeing you all then. Thank you very much.

(Thereupon, at 5:50 p.m. the seminar was adjourned.)

C E R T I F I C A T I O N O F R E P O R T E RDOCKET/FILE NUMBER: P994312CASE TITLE: GLOBAL E-MARKETPLACEHEARING DATE: JUNE 8, 1999

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

DATED: 6/23/99

Wesley Armstrong

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

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

Beth Roderick