



Conference on Empowering E-Consumers:
Strengthening Consumer Protection in the Internet Economy
Washington DC / 8-10 December 2009

Background Report

OECD Conference on

Empowering E-consumers

Strengthening Consumer Protection in the Internet Economy

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Washington D.C., 8-10 December 2009



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

In 1999, the OECD adopted a set of voluntary *Guidelines for Consumer Protection in the Context of Electronic Commerce* (“the 1999 Guidelines,” Annex I) to assist governments, business, and consumer representatives in developing and implementing consumer protection mechanisms for online transactions. In light of the dynamic development of the Internet since that time and the conclusions reached at the 2008 Seoul Ministerial on the *Future of the Internet Economy*, which highlighted consumer protection and empowerment issues, the OECD’s Committee on Consumer Policy (CCP) launched a review of the 1999 Guidelines to determine how they might need to be adapted to respond to new and evolving challenges.

In support of the review, the OECD is organising a conference, *Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy*, which will take place from 8-10 December 2009, in Washington, D.C. This report provides background for the conference, which will bring together senior government officials, representatives of the business community, civil society, international organizations, academics and other stakeholders from OECD and non-member economies. The report frames the issues that will be discussed, and is structured to follow the conference agenda; conclusions will be developed in a subsequent report that will be prepared in 2010.

The report, which was declassified by the Committee on 6 November 2009, was prepared principally by Brigitte Acoca of the OECD Secretariat, in consultation with stakeholders. It has benefited from information gathered through a questionnaire circulated to governments in 2009, as well as a discussion jointly organised by the CCP and the International Consumer Protection and Enforcement Network (ICPEN) on 1 April 2009. A more comprehensive and complete analysis will be prepared during 2010.

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INTRODUCTION

1. The Internet has provided consumers with a powerful tool for searching for and buying goods and services. Benefits have included increased competition and lower prices, more choice in products and services, and the convenience of shopping for goods and services from vendors located around the world, from anywhere and at any time. The background material for the OECD's 2008 Seoul *Ministerial on the Future of the Internet Economy*, which looked closely at how the Internet could be more effectively used to benefit society, recognised these transformative effects, noting that: "As the services it [the Internet] supports become pervasive, ubiquitous and more essential in everyday life, the economy is increasingly the Internet economy" (OECD, 2008a, p. 4). Given the significant benefits of e-commerce to the economy and to consumers, it is important for governments and stakeholders to work together to ensure that the benefits are fully realised, which includes finding ways to boost consumer confidence in online transactions. Adequate disclosure and assured privacy and security are key in this regard.

2. Electronic commerce ("e-commerce") involves the buying, selling or exchanging of goods, services, and information through electronic networks. E-commerce has three basic forms: business-to-business transactions (B2B), business-to-consumer transactions (B2C), and consumer-to-consumer transactions (C2C). B2B e-commerce is the largest category by far, but the two consumer-oriented forms which are the focus of the CCP's work (B2C and C2C) have been growing rapidly in recent years, based largely on the rapid expansion and diffusion of the Internet and, more recently, on increased broadband access. Mobile commerce (or "m-commerce") also has developed, offering a new platform for commercial transactions, including those that are Internet-based.

3. In many respects, consumer-oriented e-commerce shares characteristics with the types of distance selling carried out by mail order: buyers and sellers have limited or no personal contact and the two parties are often not in close proximity to one another. Reflecting this, countries have often applied laws and regulations applicable to distance selling to e-commerce. The Internet, however, has an "inherently international nature" and e-commerce transactions take place with far more "ease and speed" than traditional distance selling (OECD 1999). The commercial environment thus differs from what consumers are used to, which has created new challenges for them (OECD 1999). This, in turn, has given rise to the development of new guidelines, laws and regulations in many OECD countries and non-member economies. Considerable attention has been paid to creating a policy framework that promotes good business practices and builds consumer confidence in the online environment. Core elements of this framework include adequate disclosure, protection for consumers who purchase online from fraudulent and unfair commercial practices and efficient and effective mechanisms for dispute resolution and redress.

4. This report assesses current trends and challenges in e-commerce for consumers with a view towards identifying where consumer protection may need to be strengthened or changed. It is structured along the lines of the agenda for the upcoming OECD conference. It comprises two parts. Part one examines how e-commerce has evolved and assesses the role that international guidelines have played in shaping the trading environment. Part two identifies some of the key challenges facing consumers and policy makers as e-commerce evolves. The following topics are addressed:

- Evolution of e-commerce and the role of international guidelines:
 - E-commerce trends and outlook: Consumer aspects.
 - Promoting e-commerce: Role and effectiveness of international guidelines.
- Developments and challenges:
 - E-commerce regulatory frameworks.

- B2C: Business as sellers - recent developments.
- Mobile commerce.
- C2C: Consumers as sellers.
- Digital content products.
- The participative web: Consumer-driven content in e-commerce.
- Protecting children on-line.
- Accountability in e-commerce.

I. Evolution of e-commerce and the role of international guidelines

5. Section one describes how e-commerce has evolved during the past ten years, and provides an assessment of the role that international guidelines have played in protecting and empowering consumers in the Internet economy.

E-commerce trends and outlook: Consumer aspects

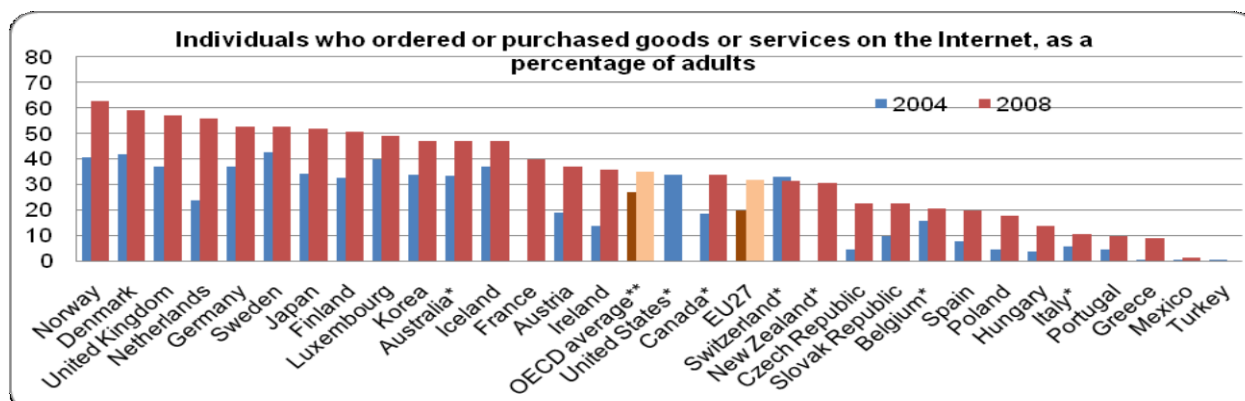
6. The Internet economy has grown dramatically since the 1999 Guidelines were adopted. It has opened up new commercial opportunities for business and consumers. Consumers have benefitted significantly through enhanced capacity to research and compare products, expanded choice in products that may be purchased at any time and from anywhere, and more possibilities to customise products to better meet personal preferences. In addition, increased transparency has intensified competition, oftentimes resulting in lower prices for consumers. Airline and hotel bookings by consumers using the Internet have grown sharply, while a broad range of other items, including cars, food, appliances and electronic equipment are also being sold online. In the services sector, financial services, including online banking, have been expanding rapidly. Copyright-based industries (including film, music, games, news and book publishing) have also played a leading role in promoting e-commerce by developing new types of products and content. Opportunities for further growth, however, appear to be substantial.

Issues for the E-Commerce Outlook panel

- *How has e-commerce (excluding B2B) evolved over the past 10 years globally and in different country and product markets?*
- *What have been the principal factors driving development?*
- *What explains the differences in the role that e-commerce is playing in different product sectors and in different countries?*
- *What have been the principal obstacles in furthering development of e-commerce?*
- *What specific factors are impeding expansion of cross-border transactions?*
- *What do complaints data and market research tell us about conditions in e-commerce and what needs to be addressed to strengthen confidence in the platform?*
- *How is e-commerce expected to change in the next several years?*
- *What new technological and policy issues are emerging? What impact will mobile commerce have on markets?*

Profile of e-commerce

7. In the OECD area, the number of consumers purchasing goods and services over the Internet is rising. As shown in Figure 1, the percentage of adults doing so increased from 26.9% in 2004, to 35% in 2008. There is, however, considerable variation among countries. More than 50% of adults from Japan and several European countries ordered or purchased goods or services on the Internet in 2008, while in a number of other OECD countries, less than 10% did so.

Figure 1. Individuals who ordered or purchased goods or services on the Internet as a percentage of adults

Notes: (*) Australia (data for 2007 instead of 2008), Belgium (data for 2005 instead of 2004), Canada (data for 2003 instead of 2004, 2007 instead of 2008), Italy (data for 2005 instead of 2004), New Zealand (data for 2006 instead of 2008), Switzerland (data for 2005 instead of 2008), United States (data for 2003 instead of 2004). (**) OECD average (simple average of available data). Generally, data from the EU Community Survey on household use of ICT, which covers EU countries plus Iceland, Norway and Turkey, relate to the first quarter of the reference year. For the Czech Republic, data relate to the fourth quarter of the reference year. Individuals aged 16-74 years, except for Canada (18-74), the Czech Republic (15+), Japan (6+), Mexico (18+), Switzerland (14-74). Data generally refer to Internet use in the last 12 months for non-Eurostat countries and for Eurostat countries.

Source: OECD ICT Database.

8. The number of consumers using the Internet to purchase products is, however, only part of the picture. The volume and types of products being purchased are also important indicators. Data on the magnitude of e-commerce trade are unfortunately not available for many countries and where data do exist, they are often not comparable. Available information from national authorities suggests that B2C e-commerce is expanding rapidly but that its role remains relatively low, especially when compared to traditional retail and B2B e-commerce. In the United States, for example, B2C e-commerce retail sales have grown many-fold since 2000, rising to USD 133 billion in 2008, up 5% from 2007. Their role, however, is still relatively limited, accounting for less than 4% of total retail sales (US Census Bureau, 2009a). B2B, on the other hand, generates USD 3.1 trillion in sales, accounting for over 27% of total B2B transactions.

9. Studies reveal that acceptance of the Internet as a trading platform is growing. In 1998, just before the 1999 Guidelines were adopted, consumers were not buying much online. Instead, “most... cho[o]se to research the product’s cost and availability, and compare features, advantages, and benefits online, [to] then buy, using traditional means (phone, fax, retail outlet)” (Campbell, 1998). This type of relationship between online and traditional shopping still exists, but the situation is changing and more consumers are making purchases online. Between 2000 and 2002, most individuals used the Internet principally for sending e-mails and searching for information. By 2007 however, online purchases increased notably. According to a survey, 66% of “online Americans” purchased a product on-line in 2007, up from 46% in 2000 (Pew Internet & American Life Project, 2008, p. 2). In 2008 in the EU, out of the 36% of Internet users who compared goods or services through price comparison websites, 17% purchased a product on-line and 10% in a shop, while 13% did not make a purchase (EC, 2009a, p. 9).

10. Acceptance, however, varies among sectors. According to a 2008 Nielsen survey, in 2007 the most popular and purchased goods over the Internet worldwide were books, clothing, videos, DVDs, games, airline tickets and electronic equipment (The Nielsen Company, 2008). In the United States, online leisure travel related spending amounted to USD 83.9 billion in 2008, while other online retail spending amounted to USD 141.3 billion (Forrester Research Internet Shopping Forecast, December 2008). Online non-travel related retail spending rose from USD 12.3 billion in 1999 to USD 141.3 billion in 2008 (Forrester Research Internet Shopping Forecast, December 2008). ‘Music and Videos’ was one of the top

merchandise categories for percentage of online sales, with 74% (US Census Bureau, 2009b). It can also be noted that e-commerce has also been a growing vector for sales of services, accounting for 1.8% (USD 124 billion) of selected service industries' total revenues in 2007, including, for example, the arts and entertainment services. In Italy, in 2008, e-tourism accounted for 50% of the e-commerce market. In Mexico, the yearly sales of e-tourism doubled in 2007 alone. In other sectors, the role of e-commerce is still relatively low, as evidenced by the overall low share of retail sales accounted for by e-commerce.

Cross-border trade

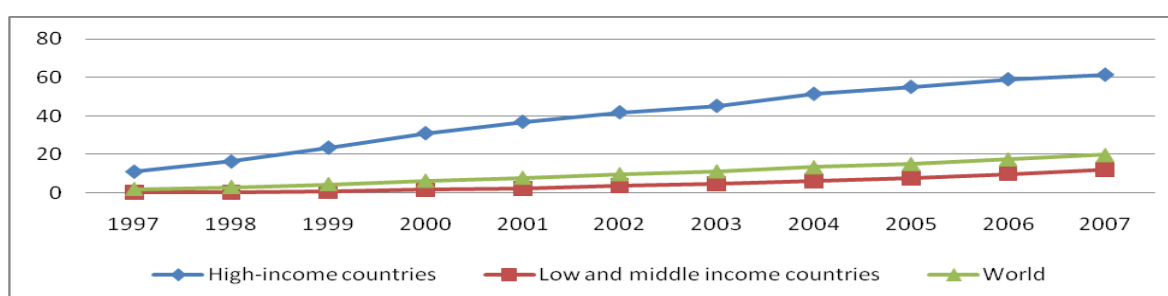
11. The Internet has provided a means for consumers to easily buy products from foreign businesses; their willingness to do so, however, has been limited. In the EU, while 33% of consumers purchased products on-line in 2008, only 7% of consumers bought from another country (EC, 2009b, p. 6). In the same year, while 51% of retailers in the EU were selling via the Internet, only 21 % conducted cross-border transactions within the EU, representing a 8% decrease from 2006 (EC, 2009b, p. 7). There is considerable variation, however, among countries. In Norway, for example, the share of foreign purchases was 15% in 2008, while in Denmark and Finland, the share was 20-25%; in Canada, however, close to half of purchases were cross-border (OECD, 2009 responses to OECD questionnaire).

12. There are a number of reasons for the relatively low level of cross-border e-commerce. According to an EC report, the European business community believes there are five principal impediments: *i*) language problems; *ii*) higher delivery costs; *iii*) evolving scams and misleading practices; *iv*) additional cost of compliance with different national fiscal regulations; and *v*) regulatory barriers, including questions pertaining to the applicability of each country's laws when cross-border transactions take place (EC, 2009b). Some of these reasons are similar to those provided in the answers to the OECD questionnaire.

Factors driving e-commerce growth

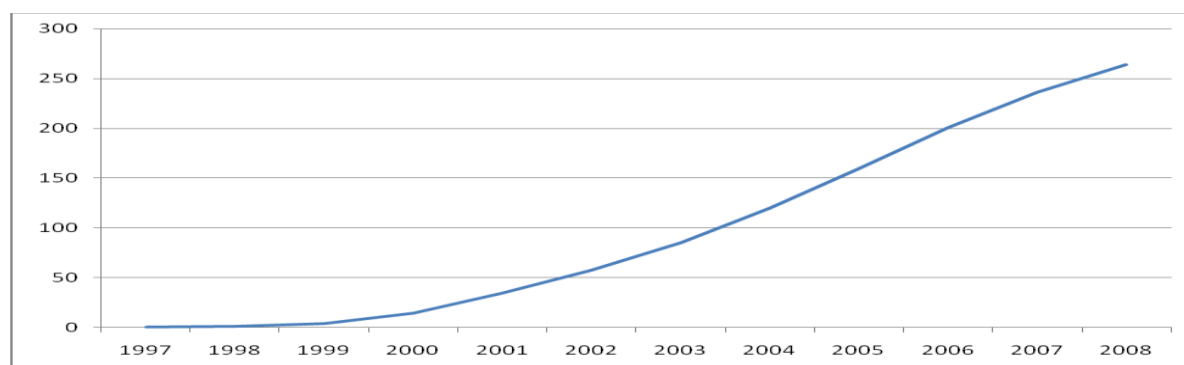
13. One of the main drivers underlying e-commerce growth is the rising number of individuals connected to the Web. As shown in Figure 2, some 22 per cent of the world's population used the Internet in 2007, compared to 2 to 5% in the late 1990s. The uptake has been particularly strong in the developed world, where the portion of Internet users has risen more than five-fold from the late 1990s, to 62% of the population in 2007.

Figure 2. Internet users per 100 inhabitants 1997-2007



Source: International Telecommunications Union's World Telecommunication Indicators Database, at: www.itu.int/ITU-D/ict/statistics/ict/graphs/internet.jpg.

14. More recently, broadband penetration and the growing use of mobile devices have further boosted e-commerce. As shown in Figure 3, broadband subscriptions have surged in the OECD area with a compound annual growth rate of 44% since 2000.

Figure 3. OECD broadband subscribers, million (1997-2008)

Source: Data collected from the 2009 *OECD Communications Outlook* (OECD, 2009b) and the OECD Broadband Portal, at: www.oecd.org/document/54/0,3343,en_2649_34225_38690102_1_1_1_1,00.html.

15. Consumers with broadband have been more active in e-commerce than those who do not have high-speed access (OECD, 2008b, p. 207). In Ireland and Finland, for example, Internet users having a broadband connection were almost twice as active in buying online as those not having broadband access (OECD, 2008c, p. 85).

16. With respect to mobile devices, between 1993 and 2007, the number of cellular mobile subscribers grew at an average compound rate of 30% per year in the OECD area (OECD, 2009b, p. 132). According to eMarketer, the combined spending on consumer and business mobile applications will top USD 13 billion worldwide by 2012, a nearly fivefold increase over 2009. In the United States, in 2007, there were 263 million US mobile subscribers (compared to 55 million in 1997), representing an 87.1% penetration rate of the US population (OECD, 2009b, p. 132 and 134). This number is likely to grow as US consumers continue to access the Internet from mobile devices more frequently than from PCs. In Indonesia, in 2008, the total number of CDMA subscribers exceeded 16.3 million, up from 14.4 million at the end of 2007 and 7.8 million at the end of 2006, compound annual growth rates of respectively 53 and 85% (Reuters, 2008). In Japan, according to the Telecommunications Carriers Association, 3G CDMA subscribers exceeded 100 million in April 2009.

17. The presence of e-retailers is another important factor influencing e-commerce activity. In the United States, for example, a comparatively high level of e-commerce activity is due, in part, to many large successful Internet-only retailers, such as Amazon.com, as well as the presence of most major “bricks and mortar” retailers online. According to an EC report, in countries where there is a high proportion of retailers selling online, more consumers also purchase products or services on-line (EC, 2009a, p. 68). Consumers in the Netherlands, Sweden and Denmark are the most active in buying online, with more than 60% having done so in the last 12 months. The proportion of retailers selling online in these countries is similarly high, exceeding 50% in each country. Other factors, such as the creation of new websites and supply diversification, are seen as drivers for e-commerce growth (FEVAD, 2009).

Outlook

18. The financial and economic crisis appears to be giving e-commerce a boost as consumers search for ways to reduce expenditures by purchasing items on-line. The savings can be substantial. According to research undertaken by Frontier Economics (EC, 2009c, p. 17), consumers in the United Kingdom, Germany and France can obtain savings of around 17% by buying consumer electronics products, computers, DVDs and clothing on online trading platforms rather than in traditional stores. Businesses are also being attracted to the Internet as it provides a means to increase visibility and markets at relatively low

cost during a period of financial hardship. In addition, individuals who lose their jobs appear to be turning to the Internet to set up new businesses, which is providing a further boost to e-commerce. For these reasons, even as retail sales ease in 2009, e-commerce is expected to grow (*E-commerce Journal*, 2008).

19. In the United States, while most economic sectors were experiencing a downturn in the first quarter of 2009, online retail sales for 80 retailers rose by an average of 11%; about 70% of both consumer brand manufacturers and multichannel retailers reported online sales increases (eMarketer, 2009). Craigslist, the “free classifieds” site is expected to generate USD 100 million revenues in 2009, a 23% increase from 2008 (AIM Group, 2009). Amazon generated net revenue of USD 177 million in the first quarter of 2009, an increase of 24% from the first quarter of 2008.

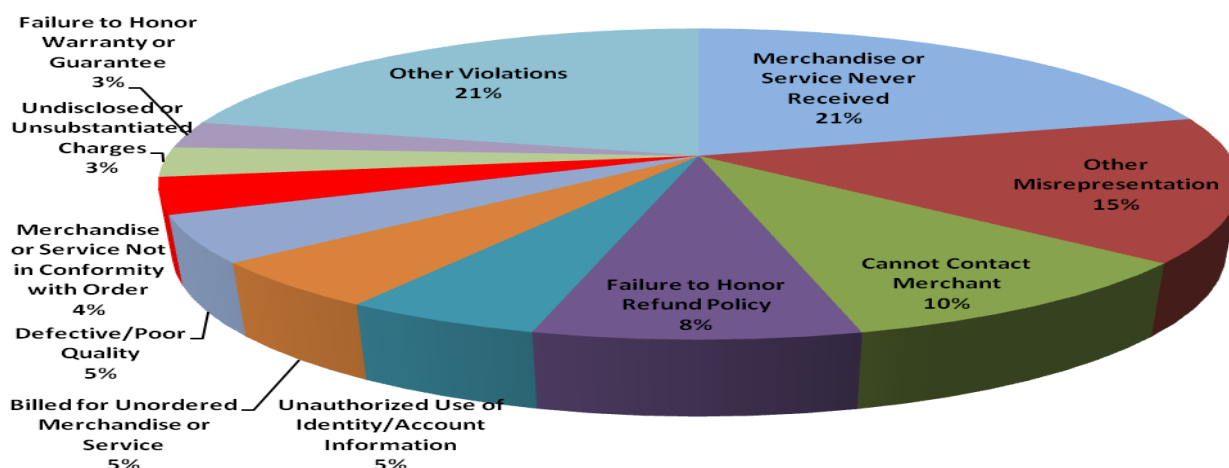
20. In Western Europe,¹ Forrester estimates that consumers will purchase EUR 123.1 billion of goods by 2014, a compound annual growth rate of 9.6% from the 2008 level of EUR 71 billion (Internet Retailer, 2009). The French electronic commerce and distance selling federation estimated that, for the first quarter of 2009, e-commerce sales grew by 26% and should increase throughout the year by 20 to 25% (FEVAD, 2009).

21. In China, in early 2009, over 500 000 people, including online sellers and shopkeepers, were making their living (as a primary source of income) through Taobao.com, an online auction and retail website unit of China's leading e-commerce company Alibaba Group (CriEnglish, 2009). In February 2009, Taobao's transaction volume increased by 131% from the year before, helped by higher Internet usage in the country.

22. The speed and extent to which B2C and C2C commerce grow depends for a large part on the level of confidence that consumers have in online shopping. There are challenges to be addressed in this regard. Figures related to complaints filed with the European Consumer Centre Network (the “ECC-Net”) for 2007 show that half of the cross-border complaints and disputes related to purchases made over the Internet (EC, 2009a, p. 72). Delivery problems and dissatisfaction with the products purchased were the leading reasons for the complaints, accounting for 75 per cent of the total. Information collected by *econsumer.gov*, which is an intergovernmental initiative that provides a means for consumers to file complaints involving cross-border transactions (e-commerce and other forms), reveals a similar pattern, as shown in Figure 4.

¹ The countries covered are as follows: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

Figure 4. Top Law Violations for E-consumer Complaints (1 January – 31 December 2008)



¹ Percentages are based on the 14 214 e-consumer law violations reported from 1 January to 31 December 2008. One complaint may have multiple law violations.
Source: US FTC, 2009a, p.13.

Promoting e-commerce: Role and effectiveness of international guidelines

23. Governments realised early on that the Internet platform represented a new way of doing business and that traditional approaches to consumer protection would have to be adapted. At the international level, OECD countries tackled these and related challenges at a 1998 Ministerial on e-commerce, in Ottawa, Canada (OECD, 1998). The Ottawa Ministerial laid the groundwork for the development by the Committee on Consumer Policy of the 1999 Guidelines (OECD, 1999), which establish key principles for protecting consumer interests (Box 1).

Box 1. Key policy principles in the 1999 Guidelines

- *Scope:* business-to-consumer (B2C) e-commerce.
- *When concluding e-commerce transactions, consumers should benefit from:*
 - Transparent and effective protection.
 - Fair business, marketing and advertising practices.
 - Clear information about:
 - An online business's identity.
 - The goods or services at offer.
 - The terms and conditions of transactions.
 - A transparent confirmation process of the transaction.
 - Secure payment mechanisms.
 - Fair, timely and affordable dispute resolution and redress.
 - Privacy protection.
- *Member countries should encourage and enhance:*
 - Consumer and business education.
 - Public-private sector co-operation as well as industry-led regulation.
 - The adoption and adaptation of laws and practices applicable to e-commerce.
 - International law enforcement co-operation.

24. The 1999 Guidelines provide both a framework and a set of principles to assist:

- Governments in reviewing, formulating and implementing consumer and law enforcement policies, practices, and regulations if necessary for effective consumer protection in the context of electronic commerce.
- Business associations, consumer groups and self-regulatory bodies, by providing guidance as to the core characteristics of effective consumer protection that should be considered in reviewing, formulating, and implementing self-regulatory schemes in the context of electronic commerce; and
- Individual businesses and consumers engaged in electronic commerce, by providing clear guidance as to the core characteristics of information disclosure and fair business practices that businesses should provide and consumers should expect in the context of electronic commerce.

Issues for the Guidelines panel

- *How effectively have the core principles in the 1999 Guidelines been implemented by stakeholders in OECD countries and non-member economies?*
- *To what extent have these and subsequent OECD Guidelines proved adequate?*
- *Which areas need further attention?*
- *How well do instruments being developed in other international fora complement the OECD Guidelines?*
- *How could international collaboration be improved?*

25. When the Guidelines were adopted in 1999, stakeholders anticipated that in the field of consumer policy, further guidelines would be needed in certain areas, notably for combating cross-border fraud, fighting spam, and establishing robust frameworks for dispute resolution and redress. In this regard, the OECD subsequently developed Guidelines in each of these areas (Box 2). In addition, policy instruments were developed by the CCP on mobile commerce, online identity theft, and communication services to address new challenges, for the 2008 Ministerial on *The Future of the Internet Economy*, (Box 2).

Box 2. OECD recommendations relating to consumers and e-commerce

Council Recommendations:

- **Cross-border fraud.** In 2003, the OECD issued *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders* (OECD, 2003a) which aim to establish a common framework to combat online and offline cross-border fraud through closer, faster, and efficient co-operation between consumer protection enforcement agencies. While the guidelines cover all forms of transactions, the 2003 Guidelines are a direct outgrowth of the 1999 Guidelines.
- **Spam.** In 2006, the OECD issued a *Recommendation on Cross-border Co-operation in the Enforcement of Laws against Spam* (OECD, 2006a), which aimed to enhance cross-border enforcement co-operation in the fight against spam.
- **Dispute resolution and redress.** In 2007, the OECD issued a *Recommendation on Consumer Dispute Resolution and Redress* (OECD, 2007a), which contains principles for resolving B2C disputes (at domestic and cross-border levels), both offline and on-line. These Guidelines were developed pursuant to the 1999 Guidelines, which called for further study in this area.
- **Electronic authentication.** In 2007, the OECD issued a *Recommendation on Electronic Authentication* (OECD, 2007d), which encourages member countries to establish compatible, technology-neutral approaches for effective domestic and cross-border electronic authentication of persons and entities. The Recommendation re-affirms the important role of electronic authentication in fostering online trust and the continued development of the digital economy.

2008 Committee-endorsed instruments:

- **Online identity theft.** Recognising identity theft as a serious threat to consumer confidence in e-commerce, the *Policy Guidance on Online Identity Theft* (OECD, 2008d) contains principles aimed at preventing consumers from being victimized online through stakeholder education about the problem.
- **Mobile commerce.** While mobile commerce development varies from country to country, the *Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce* (OECD, 2008e) identifies new challenges faced by consumers in the marketplace and ways for governments to address them in co-operation with the private sector.
- **Communication services.** The *Policy Guidance for Protecting and Empowering Consumers in Communication Services* (OECD, 2008f) aims to ensure adequate protection of consumer interests in communication services while maintaining an environment that provides incentives to develop new communication services.

26. One of the key conclusions of the Ministerial was that countries should “assess the application of current instruments addressing consumer protection and empowerment... in light of changing technologies” (OECD, 2008g, p. 10). It is in that context that the CCP is reviewing the 1999 Guidelines. The sections that follow examine how governments have implemented the Guidelines and provide background on some of the key issues that have emerged in recent years.

Implementation of the 1999 Guidelines

27. Over the past decade, the 1999 Guidelines have been widely promoted and adopted by stakeholders through (i) new or adapted regulatory frameworks, (ii) private sector initiatives, and (iii) consumer education initiatives. In most OECD countries, regulations on information disclosure requirements for business pre-date the 1999 Guidelines. To adapt these rules to the online environment, further e-commerce specific instruments including laws, regulations, and guidance, have been adopted over the years, or are being developed by countries. These instruments address a range of related issues including fraud, spam, privacy, security, enforcement, and dispute resolution and redress (Box 3).

Box 3. New or adapted e-commerce frameworks in OECD countries and non-member economies

Australia. The 1999 Guidelines served as a model to develop the country's best practice model in e-commerce, which was revised in 2006 (Treasury, 2006).

Canada. In 2001, a new approach to harmonised consumer protection legislation in e-commerce was adopted to ensure that consumers benefit from equal protection across the country. A common Internet Sales Contract Harmonization template was in that regard endorsed by federal, provincial and territorial Ministers (Industry Canada, 2001). The Competition Bureau developed an Information Bulletin (Competition Bureau, 2003) to ensure that those making representations online understand their responsibilities under the Competition Act. Draft legislation on e-commerce is currently being examined to combat spam more effectively.

Chile. In 2004, Chile reformed its Consumer Protection Act to introduce information disclosure requirements for businesses in e-commerce transactions.

European Union (EU). In 2000, a Directive on electronic commerce was adopted to establish the basic legal framework for electronic commerce in the Internal Market. In 2008, the European Commission issued a proposal for a Directive on Consumer Rights aimed to clarify and harmonise consumer protections in both offline and online transactions throughout the European Union (EC, 2008a).

France. In 2008, the *Loi Chatel* was adopted to complete the *Code de la Consommation* through various measures aimed to *i)* better protect consumers in e-commerce, and *ii)* put an end to certain commercial practices that had developed. These include enhanced pre-contractual information requirements, and indication of a date for the delivery of products.

Japan. In 2002, Japan's Fair Trade Commission established an Electronic Commerce Monitoring System to collect information on misleading business' representation online. The Ministry of Economy, Trade and Industry (METI) developed Interpretive Guidelines on Electronic Commerce and Information Property Trading (METI, 2007) which provide guidance for the application of laws to e-commerce.

Mexico. In May 2000, the Federal Consumer Protection Law was amended in light of the principles in the 1999 Guidelines.

Norway. The Consumer Ombudsman published guidelines on B2C e-commerce on its website. The Ombudsman also developed a standard contract to be used by online traders to address the following identified problems: *i)* lack of information about delivery costs and right to withdraw; *ii)* wrong information about guarantees; *iii)* no contact information displayed on the web site; *iv)* problems with delivery.

United Kingdom. The OFT provides general guidance for business to help them comply with distance selling regulations. The country's implementation of the EC directives on privacy and e-commerce empowers a number of enforcers to take action against Spam and other internet threats, and the OFT is currently increasing its capability in the area of economic threats to consumers on-line. As part of the Government's commitment to improving consumer confidence online, the OFT is also producing a strategy recommendation on how Internet threats can best be tackled by UK enforcers. This strategy is due to be finalised in October 2010.

United States. In 2000, the US FTC issued guidance on the application of existing law to online advertising and marketing (US FTC, 2000a). On the legislative front, the US Congress passed the CAN-SPAM Act of 2003, which prohibits various practices in connection with unsolicited commercial e-mail. It also passed the US Safe Web Act of 2006, which provides the US FTC with enhanced information sharing and investigative powers to facilitate enforcement co-operation with foreign law enforcement agencies on cross-border fraud and deception, including spam, spyware, and other online fraud. In 2009, the US FTC revised its *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, which address endorsements by consumers, experts, organisations, and celebrities, as well as the disclosure of important connections between advertisers and endorsers (US FTC, 2009c).

Egypt. Draft legislation on e-commerce is currently being discussed by stakeholders. The 1999 Guidelines are being translated into Arabic.

South Africa. Chapter VII of the Electronic Communications and Transactions Act 25 of 2002 was developed based on the principles in the 1999 Guidelines and the EC Distance Selling Directive. In April 2009, the country adopted the Consumer Protection Act covering e-commerce marketing and selling of products and services.

Vietnam. Legislation on e-commerce is being developed to notably address issues related to the protection of personal information online.

28. Additional information on implementation measures can be found in, respectively, the Committee's one and three year implementation reports (OECD, 2001 and OECD, 2002a).

29. The OECD has not been alone in addressing e-commerce issues. Important initiatives have been taken by governments through bilateral or multilateral arrangements, and in other international forums and organisations (see Annex II to the present report for an overview of the main intergovernmental initiatives). Moreover, while the Guidelines were developed by OECD countries, they are relevant to, and have been used by non-member economies as a basis for developing laws and best practices. In its response to the OECD questionnaire, the United Nations Committee on Trade and Development (UNCTAD) has suggested, however, that while the 1999 Guidelines are a leading model for consumer protection in an e-commerce environment, they may not be fully relevant to developing economies where consumer protection laws are not fully developed, or have not developed in the same manner as in OECD countries.

Industry self-regulation

30. The private sector has been active in developing tools aimed at enhancing consumer and business confidence in e-commerce. In the United States, in 2000, the Better Business Bureau (BBB) developed a *Code of Online Business Practices* designed to guide ethical "business to customer" conduct in e-commerce (BBB, 2000). It also established an online reliability seal program which allows consumers to "click to check" whether a company is an accredited business that abides by the BBB's standards. This programme is regarded as growing out of the 1999 Guidelines (US FTC, 2000c). In July 2009, leading US marketing and advertising industry associations released their self-regulatory programme for online behavioural advertising addressing privacy concerns and increasing consumer trust in the collection and use of online information (IAB, AAAA, ANA, DMA, 2009). In Mexico, the Association of Internet (AMIPCI) developed a code of ethics. In 2008, it also established a system of trust mark allocations granted to companies involved in e-commerce to evaluate Internet sites and certify their reliability. In Belgium, business developed a code of conduct on mobile commerce governing all services provided through a short messaging service code (SMS) over Belgium's mobile network (GOF, 2008). A number of companies selling products and services via the Internet joined a *BeCommerce* initiative, a Belgian association grouping direct marketing companies aimed to stimulate confidence in distance shopping. The association also developed a distance selling trust mark. In Chinese Taipei, trust mark systems were put in place by the Secure Online Shopping Association (SOSA) and the Net Consumer Association (NCA), which established a website certification system. In Chile, in 2004, an e-commerce *Code of Practice* was developed by Santiago's Chamber of Commerce.

31. Within the EU, *Euro-Label*, the business community developed an electronic shopping trust mark, to boost cross-border e-commerce by helping to assure e-consumers about the reliability of e-retailers' products and services.² At the international level, business created the Global Trustmark Alliance to promote safe e-commerce.³

Public-private partnerships initiatives and agreements

32. Public-private initiatives have taken a number of forms. In the United Kingdom, authorities worked with online auction and price comparison sites to develop messages for consumers about their rights online. In Canada, a *Code of Practice for Consumer Protection in Electronic Commerce* was developed by business, consumer groups and government to establish benchmarks for good business practice for merchants conducting commercial activities with consumers on-line (Industry Canada, 2004). In Japan, the Direct Marketing Association consults consumers on direct marketing and is engaged in dispute settlement. In Finland, in 2009, the Consumer Agency and the Direct Marketing Association developed a framework that includes basic requirements for businesses selling products on-line. In 2008,

² See: www.euro-label.com/euro-label/ControllerServlet.

³ See: www.globaltrustmarkalliance.org/index.asp.

the *Advanced Fee Fraud Coalition*,⁴ for example, was formed by a number of firms and the African Development Bank to raise global awareness about lottery hoax e-mails.

Education initiatives

33. The 1999 Guidelines call on governments, businesses and consumer organisations to educate consumers about e-commerce and the consumer protection framework in place to enable them to make informed choices in e-commerce. The CCP recently completed a major assessment of consumer education, following which a series of policy recommendations, including some on digital competence, were approved by the Committee (OECD, 2009a). Countries have also been active on this front. In the United Kingdom, two websites were developed to educate consumers about on-line purchases: *Consumer Direct* (the national body which provides consumer advice) has a website which contains tips for safe shopping on-line, and *GetSafeOnline* warns consumers about scams. In the United States, *OnGuardOnline.gov*, maintained by the US FTC, provides education about a number of issues including identity theft, Internet auctions, children's privacy, online shopping, and social networking, with contributions from public and private sector partners. Within the framework of Australia's annual *National E-Security Awareness Week*, in 2009, the government partnered with industry groups to educate consumers and businesses about online security risks and steps that should be taken to protect themselves. In Mexico, NACPEC (the North American Consumer Project on Electronic Commerce), a non-profit Mexican organisation, provides information sources on e-commerce for consumers located in North America. In May 2009, the European Commission released the *eYouGuide*, aimed to explain consumer rights in online shopping. Additionally, Childnet International and Pro-Music, supported by the European Commission and several local governments, launched a global education campaign "Young People, Music and the Internet" in 2008, which has thus far been delivered to schools and parents in 17 countries and in 13 languages. The information portal www.pro-music.org hosts, among other things, a comprehensive directory of legitimate online services worldwide.

34. Education has also been promoted through publicised enforcement actions. The ICPEN and the EU CPC Network, for example, carry out co-ordinated sweeps which are designed to combat fraud in a highly visible manner through co-ordinated investigation and enforcement action. In 2008, in the EU, a "sweep" targeted mobile operators to help identify unclear information about prices, trader information, and misleading advertising. ICPEN's *Fraud Prevention Month* is also used to raise consumer awareness about scams. Education has been further promoted through simulations. In the United Kingdom, the OFT developed two fake websites, delivered through *Consumer Direct*, that offered miracle health and slimming products, providing warnings to the 15 000 visitors that were drawn to the sites.⁵

Obstacles

35. The OECD questionnaire asked countries and other stakeholders to describe the main challenges that they have faced in implementing the Guidelines. The responses included a range of perspectives. For example, one view is that the principles were too general in nature. Another view is that the principles are not keeping up with the new developments posed by the evolution of technologies and need to be updated. Others expressed the view that full implementation of the guidelines required the participation of a range of stakeholders, which complicated the process. Others focused on enforcement challenges including the resources and training needed to enforce e-commerce cases, limitations on information sharing and asset recovery, and the lack of harmonisation of applicable law and jurisdiction. Another view pointed to issues associated with the privacy of consumer data in e-commerce transactions.

⁴ See: www.affcoalition.org/.

⁵ See www.of.gov.uk/news/press/2009/73-09.

II. Evolving and emerging issues

36. Business models and consumer expectations have changed as the Internet has evolved. This section examines a range of legal, business, and technological developments and the consumer protection challenges they raise for governments and stakeholders. Each subsection is keyed to a panel for the Washington Conference.

37. One area which is common to all the issues addressed in this section concerns privacy. Concerns over the safety of personal information collected online have been shown in a number of studies to undermine consumer confidence and hence their willingness to purchase items, in particular if the purchases would involve cross-border transactions (OFT, 2007). The importance of the issue is reflected in the review of the 1980 *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* that is being undertaken by the OECD Committee for Information, Computer and Communications Policy (ICCP), through its Working Party on Information Security and Privacy (WPISP).

E-commerce regulatory frameworks

38. The regulatory frameworks for e-commerce vary among countries. In addition to differences in substantive law, countries have different approaches toward regulation. This can have implications not only for business, but also for consumers – particularly those engaging in cross-border trade. Consumer rights and obligations, for example, vary considerably from one jurisdiction to another. Some countries use generic regulation, developed in other consumer protection contexts, to address e-commerce issues, while others have adopted more specific regulation. Some other countries use a mix of both approaches.

Issues for the E-commerce Regulatory Frameworks panel

- *What are the principal differences in the approaches used by governments to regulate e-commerce?*
- *What implications do these differences have for consumers and business?*
- *How can technical and legal barriers be lowered to facilitate cross-border B2C e-commerce?*
- *How can the Guidelines encourage more international co-operation and collaboration to address these different approaches?*

39. Examples of specific legislation include the *Loi Chatel* which France introduced in 2008; this comprises a variety of measures aimed to enhance consumer protection in e-commerce. These require sellers to mention their contact details, indicate instances where there are no consumer withdrawal rights, and specify the date by which the seller must deliver the ordered product. In Norway, the Consumer Ombudsman developed a standard contract to be used by any online trader in 2009. This followed an assessment which revealed that almost 50% of the 40 sites checked had one or more of the following problems: *i*) a lack of information about delivery costs and right to withdraw; *ii*) wrong information about guarantees; *iii*) no contact information displayed on the website; *iv*) problems with delivery.

B2C: Business as sellers – recent developments

40. Businesses are continuously developing new ways to attract and serve consumers. Internet developers have created websites, for example, that provide consumers with experiences that go beyond mere shopping and include information, news, promotions, video clips, games, visualisation tools, and opportunities to interact with other consumers. Closely related to this is electronic retailers' emphasis on e-commerce as providing added value for consumers in the economic downturn, for example, by offering lower prices, price comparison tools, free or reduced shipping, and liberal product return policies. Another

development concerns social network sites which over time have expanded to include e-commerce activities.

41. Finally, environmental concerns are affecting e-commerce. Many consumers are viewing online shopping as a “green” alternative to shopping at bricks-and-mortar retail stores. Green shopping sites have emerged to help consumers find environmentally friendly products and more and more advertisers are putting information about product ingredients and environmentally friendly products and practices on-line.

42. As new business models have developed, a number of issues related to the 1999 Guidelines have emerged. These concern, in particular, on-line advertising, which has provided opportunities to serve consumers more effectively, while at the same time raising concerns about privacy and the use of personal information. There is also evidence that a significant number of businesses are falling short in providing consumers with adequate information on their transactions, and their rights. A recent EU-wide investigation in websites selling consumer electronic goods for example revealed that 55% of these websites showed irregularities in relation to (i) misleading information about consumer rights; (ii) misleading information about the total cost of the product; or (iii) incomplete contact details for the trader (Rapid, 2009). On the payments front, considerable progress has been made in developing mechanisms for concluding transactions, although price and payments are a source of a significant number of complaints. Finally, concerns have been raised about barriers to cross-border e-commerce, beyond the regulatory obstacles mentioned above.

Issues for the B2C Developments panel

- *What new approaches are businesses using to leverage commercial opportunities on the Internet?*
- *What new roles are consumers playing?*
- *How adequate are the Guidelines in meeting challenges that are emerging as e-commerce develops?*
- *How effective are they, for example, in addressing new marketing strategies such as behavioural or targeted advertising?*
- *How can payment protection be strengthened?*
- *How can non-regulatory obstacles to cross-border trade be addressed?*

Online advertising

43. The Guidelines recommend that “businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair ... advertising and marketing practices” (OECD, 1999, Part II, Section II). With the rise of new business models in targeting consumers online, the concept of fair advertising is attracting increased attention. Online advertising represents a solid 10% of the advertising industry (over USD 51 billion in 2008 according to the Interactive Advertising Bureau), and its role is growing rapidly. Since 2003, online advertising growth outperformed overall advertising growth significantly with double digit growth rates. One forecast predicts that Internet advertising should account for about 15% of global advertising spending in 2010, up from an anticipated 13% in 2009 (AAAA, 2009).

44. One of the key issues that has emerged concerns behavioural advertising, which tailors advertising to individual consumers, based on the tracking of their online activities and related information captured on the Internet or elsewhere over time. Such advertising can be beneficial for consumers as it is personalised and may help to filter out advertising for products for which a consumer has no interest, while at the same time providing the consumer with useful information on the availability, price and characteristics of products that may be of great interest. It may also benefit consumers by enabling businesses to provide consumers with free online content supported by revenues from online advertising.

A recent study found that online advertising contributes to USD 300 billion of economic activity in the United States, and directly employs more than 1.2 million people (IAB, 2009).

45. There are, however, concerns about the extent to which the collection and storage of consumers' personal data for advertising and marketing purposes may undermine consumer privacy.⁶ More specifically, there is concern about “the invisibility of the data collection to consumers; the shortcomings of current disclosures about the practice; the potential to develop and store detailed profiles about consumers; and the risk that data collected for behavioural advertising – including sensitive data regarding health, finances, or children – could fall into the wrong hands or be used for unanticipated purposes” (US FTC, 2009b). For example, reports of large data breaches, whether caused by negligence or malicious activity, as well as unexpected transfers of personal data to third parties, continue to cause concern (OECD, 2006d, p. 8-9). There is some research to suggest that many consumers do not want their online activities to be tracked for advertising purposes, even if it may result in discounts or other benefits (Turow *et al.*, 2009).

46. There is considerable discussion over what should be done to address these concerns. In some jurisdictions, policy makers have begun to explore the issue and develop guidance for advertisers. For example, in November 2007, the US FTC held a “Town Hall” on behavioural advertising to discuss the benefits and risks associated with the issue. The agency prepared a report and issued a set of proposed principles to encourage and guide industry self-regulation (US FTC, 2009b). In France, the CNIL (*Commission Nationale de l'Informatique et des Libertés*) published a report in 2009 which describes the trends and technology used to analyze consumer behaviour online, as well as the potential related risks for consumers (CNIL, 2009). The European Commission also addressed the above issues at a *Roundtable on Online Data Collection, Targeting and Profiling* held in 2009 (EC, 2009d).

47. In response, industry groups have come up with self-regulatory principles on behavioural advertising. As mentioned earlier in this report, in July 2009, for example, an alliance of US advertising groups proposed a set of principles to guide the use of behavioural ads. Under the principles, consumers would be informed if data about their activities on a website is to be collected or used by third parties for online behavioural advertising purposes. Consumers would be given the choice over whether their data would be collected, with the ability to opt out of collection, use, or transfer of their data in some cases (IAB, AAAA, ANA, DMA, 2009). Best practices for data security would be used and certain sensitive personal data would be subject to a higher level of protection and consumer control. The advertising groups have indicated that they will further develop the proposed guidelines, carry out an education campaign, and establish an enforcement programme. In the United Kingdom, the Internet Advertising Bureau (IAB) developed a set of self-regulatory guidelines (“the Good Practice Principles”) to put in place good practice for companies that collect and use data for online behavioural advertising purposes. The *Good Practice Principles* aim to increase consumer awareness and choice about the kind of advertising they receive. A website www.youronlinechoices.co.uk was launched to help consumers understand online behavioural advertising, how it works and may benefit them, how privacy is protected and how they can decline this advertising if they wish. Furthermore, the UK OFT has recently launched a market study (to be completed by Spring 2010) looking at behavioural advertising and the extent to which it may be harmful to consumers shopping online. A separate study (to be completed by Summer 2010) will look at those advertising and pricing techniques which may mislead consumers, such as “drip” pricing where the price is increased in incremental steps throughout the purchasing process, as well as price comparison sites (UK OFT, 2009).

⁶ See, for example, the statement of the Consumer Federation of America at: [www.consumerfed.org/elements/www.consumerfed.org/File/OnlinePrivacyPressReleaseSEPT09\(1\).pdf](http://www.consumerfed.org/elements/www.consumerfed.org/File/OnlinePrivacyPressReleaseSEPT09(1).pdf), and *Public Voice*, 2008, p. 24.

Online payments

48. The increase in the volume of online B2C transactions has been coupled with an increase in the use of payment cards online (whether debit cards, credit cards or some other type) (OECD, 2002*b*, p. 6). According to a 2008 study (*Data Monitor*, 2008), credit cards have become the preferred method of payment online among consumers globally, while PayPal and prepaid cards are becoming more widespread. The growing variety of payment solutions offered by merchants is providing them with opportunities to expand their customer base (OECD, 2006*b*).

49. Payment security appears to be one of the most important factors for consumers in their decision to make or not make online purchases. According to a 2006 survey, more than 40% of users would refrain from transacting online for fear that their personal information could be stolen (ITU, 2006). As reported by the Office of Fair Trading in the United Kingdom, in 2006, 79% of Internet users were very concerned about the risk to the security of their payment details from online shopping; an estimate of 3.4 million people were prepared to use the Internet but not willing to shop online because of a lack of trust or fears about data security (UK OFT, 2007, p. 6). Recent large scale hacks into companies' customer records have also contributed to undermine consumer confidence in providing their personal details on-line. These concerns are recognised in the 1999 Guidelines which recommend that consumers be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford (OECD, 1999, Part II, Section V).

50. Efforts have been made by both governments and industry to improve consumer protection and confidence in online payment systems. As recommended in the 1999 Guidelines (OECD, 1999, Part II, Section V), many countries have laws limiting consumer liability for unauthorised transactions (OECD, 2007*c*, p. 31 and 32). However, these vary from country to country and, in a number of countries, they tend to be generic (*i.e.* not specific to e-commerce). In some countries, consumers may not be held liable or may be liable for a portion of an unauthorised charge. In others, liability may depend on the degree of negligence on the part of the consumer. In some countries, liability rules may vary depending on the payment mechanism used (*i.e.* debit card, or credit card), or the nature of the transaction (domestic versus cross-border).

51. In addition to existing laws, the private sector has been very active in developing technological solutions and secure payment schemes for consumers. Card issuers have put in place a number of additional protections through voluntarily codes of conduct and best practices.

Obstacles to cross-border e-commerce

52. As discussed in Section I of this report, cross-border e-commerce has not reached its full potential. Online, consumers may be prevented from accessing a number of products (such as airline tickets, financial services) outside their country of residence. This is particularly true as regards the distribution of digital products, such as music, as examined later in this report.

Mobile commerce

53. When the 1999 Guidelines were adopted, mobile commerce was virtually non-existent. Today, it is playing a growing role in most OECD countries and some non-member economies. With increased access to broadband and advances in mobile device technology, the situation may evolve even more rapidly and consumers may soon be accessing the Internet more from mobile devices than PCs. For example, third generation (3G) mobile phones are becoming mobile computers which allow easier download of content and are capable of browsing the Web, performing searches, playing games, installing and operating applications, replacing MP3 players, making and watching videos and TV.

54. Developments in mobile advertising are also notable. As mobile devices grow more technologically sophisticated, they are providing vehicles for new forms of advertising. Many consumers carry mobile devices wherever they go, and advertisers have responded by developing, for example, new techniques to send personalised ads, some of which go beyond what is being done on other platforms (*i.e.* PCs) (MMA, 2008). These include: SMS, often in the form of alerts or updates (news, sports, special offers), MMS (Multimedia messages); banners (at the top or bottom of a page); “in-content,” advertising within applications, such as games; downloads, such as wallpapers, themes, and ringtones; click-to-call; and viral media whereby users are asked to pass on the ad (in the form of text or video) to other users. According to a 2006 study from the US Mobile Marketing Association, approximately 43% of US mobile video viewers and intenders (more than 19 million consumers) are willing to watch advertisements on their handsets in return for free access to mobile TV and video services (MAG Mobile Advertising Task Force, 2007, p. 17). The growing opportunities that mobile devices have provided to engage in e-commerce has benefited consumers, but some issues have emerged, as evidenced in a 2006 mobile commerce survey of consumers in the United States and the EU (TACD, 2006).

Issues for the Mobile Commerce panel

- *How adequately do the 1999 Guidelines address mobile commerce issues?*
- *In what areas could the Guidelines be built upon or improved?*
- *In what areas does mobile commerce expose consumers to increased risks?*
- *Are consumers more vulnerable to fraudulent or unfair commercial practices?*
- *What challenges is mobile-spam posing for consumers?*
- *What role can governments play in enhancing consumer protection in mobile commerce?*

55. The 2008 OECD policy guidance addressing emerging issues in mobile commerce (OECD, 2008*e*) looked at whether the principles in the 1999 Guidelines were adequate to address some new and emerging m-commerce issues. While it concluded that, in most instances, the 1999 Guidelines were adequate to provide guidance to policy makers, the guidance provided specific suggestions for all stakeholders to strengthen consumer protection areas presenting the following consumer challenges: *i*) consumers’ difficulty to access full information about the products and transaction on offer due to mobile devices’ small screens and limited storage capacity; *ii*) the need to protect children from certain forms of advertising, over-consumption and unauthorised access to personal data; *iii*) in the case of complex chains of contracts, clear dispute resolution should be available to consumers; and *iv*) ensuring adequate privacy and security. With respect to the final point, the risk that payment and personal information could unknowingly be compromised through the interception of wireless transmissions is an important concern.

C2C: Consumers as sellers

56. Since the 1999 Guidelines were adopted, e-commerce has expanded from an almost exclusive B2C model to encompass a wider range of seller-consumer relationships. Consumers are increasingly using the Internet as a means to sell goods and services, through *i*) their personal websites, *ii*) e-mail, *iii*) auction sites, and *iv*) sites providing classified advertising services. A number of C2C online platforms have developed over the past decade, ranging from classified ads (such as Craigslist or XPat.com), to online marketplaces (such as eBay) which include auction sites, sites offering both auction and classified ads, and platforms such as Amazon.com, which facilitate transactions between consumers and third parties outside of Amazon, including small individual sellers.

Issues for the C2C panel

- To what extent should the principles and rules governing B2C commerce be applied to C2C commerce?
- What are the main challenges in this regard?
- What role(s) can, or should, intermediaries play in C2C commerce?
- What principles should govern their “terms of use”?
- What role could, or should, governments play in deciding i) how C2C commerce should be structured, and ii) what the responsibilities of consumers and intermediaries should be?

57. The 1999 Guidelines focus on B2C transactions only. As early as 2000, however, the CCP began to consider the consumer protection implications of C2C transactions on-line. In particular, the CCP issued a report focused on online auctions which, at that time, accounted for the largest number of C2C online transactions, and which were a major source of consumer complaints (OECD, 2000, p. 20). In the report, the CCP examined the extent to which the principles in the 1999 Guidelines would apply to online auctions. It concluded that “some principles of the Guidelines can help guide auction operators, sellers, and buyers involved in consumer-to-consumer online auction transactions.” In 2000, when the CCP did this analysis, the most reported problems associated with Internet auctions included *i*) counterfeit products; *ii*) unauthorised sales; *iii*) non-delivery or late delivery of products (US FTC, 2000*b*, p. 1).

58. Key consumer protection issues in C2C transactions include *i*) the question of trust among sellers, buyers, and the organisation facilitating transactions; *ii*) the responsibilities and legal obligations of individuals involved in C2C transactions and of the intermediaries that provide trading platforms. More specifically, issues related to the role and responsibilities of Internet intermediaries to consumers include information disclosures and fraudulent activities such as cyber fraud and counterfeiting. In light of such developments, the 2008 Seoul Declaration invited the OECD to examine “the role of various actors, including intermediaries, in meeting policy goals for the Internet Economy” (OECD, 2008*g*, p. 10). Work in this area has in fact begun, under the auspices of the OECD’s Committee for Information, Computer and Communications Policy. The work, which currently proposes a definition of ‘Internet intermediaries’ and examines their economic and social role, will further look at public policy considerations for governments.

59. The responsibilities of intermediaries (which play a prominent role in C2C e-commerce, but also play important roles in other context) have been addressed in a number of jurisdictions. In most OECD countries limited liability rules apply to them. In the EU, the Directive on Electronic Commerce indicates that limited liability is indispensable to ensuring the provision of basic services which safeguard the continued flow of information in the network and the provision of a framework which allows the Internet and e-commerce to develop. According to the EU’s 2003 implementation report the Directive appears to have been successful in reducing court proceedings and hence legal costs (EC, 2003, paragraph 113). It has to be noted that the online environment has changed considerably in the last few years with the development of new technologies, such as peer-to-peer networks. In the United States, under certain circumstances, intermediaries such as ISPs, are not liable for the actions or omissions of sellers that harm buyers or *vice versa* or for content that other users post on their websites. Some other intermediaries, however, have been found liable by some US courts when they play a large role in creating or developing the third-party content. Likewise, courts in other jurisdictions such as France and Germany ruled that a host and editor of online communication services for intermediation purposes is responsible for ensuring that its platform is not used for illegal purposes, such as selling counterfeit or pirated products.⁷

⁷ Counterfeiting and piracy issues have been explored in two OECD reports in recent years: *The economic impact of counterfeiting and piracy* (OECD, 2007*e*) and *Piracy of digital content* (OECD, 2009*c*).

60. The most common consumer complaint about C2C transactions concerns fraud. According to the US Internet Crime Complaint Center (IC3), a partnership of the Federal Bureau of Investigation (FBI) and the US National White Collar Crime Center, of more than 275 284 complaints received in 2008, Internet auction fraud accounted for 25.5% of referred complaints (down 28.6% from 2007) (IC3, 2008, p. 4). In 2007, in the United States, the overall financial loss resulting from fraud on C2C online auction marketplaces amounted to more than USD 53.5 million (Tinbergen Institute, 2009, p. 5). As to the different types of fraud, in a 2008 report, Consumer Reports WebWatch indicates that non-delivery was among the most common complaints, affecting about 10% of users of online auctions. The next three most common were goods not arriving in usable condition; consumers not being told a key detail about the item before it arrived, and being sent an item of lesser value than the one actually purchased. When confronted with fraud, more than half in most age groups tried to resolve problems directly with the seller; about 40% of victims filed a complaint with PayPal, which acts as a payment intermediary. Few respondents chose to contact law enforcement.

Digital content products

61. Since the Guidelines were adopted in 1999, the range of digital products that consumers can buy on-line has expanded considerably. Intellectual property rights have played a key role in enabling businesses to develop a wide range of new digital products that were non-existent only a few years ago. Currently, with the expansion of broadband and advanced mobile networks, online content distribution is taking place on an unprecedented scale. Consumers can increasingly access a wide range of digital content products including films, music, news, videos, e-books, and games through different networks and devices. In the case of music, new products include customised downloads of songs, audio streaming services and offers which bundle content with ISP or mobile subscriptions and with music playing devices. Various business models have been established to allow consumers to purchase content. These include *i*) digital (purchase or rental) download, *ii*) subscription downloads (whereby consumers can access a range of digital content products on a monthly or yearly basis), and *iii*) free on-demand streaming (OECD, 2008*b*, p. 265-270). Some issues have, however, been raised, particularly with respect to the impact that pirated products are having on the copyright-based industry.

Issues for the Digital Content Products panel

- *What role are digital products playing in different markets, and how is the situation likely to evolve?*
- *What specific consumer issues need to be addressed?*
- *How should issues concerning business' disclosure obligations and consumers' use of digital products, for example, be dealt with?*
- *How can the interests of consumers engaging in cross-border trade be protected?*
- *How relevant are the 1999 Guidelines to trade in digital products? In what areas might they need to be elaborated or strengthened?*

62. Like any online purchases, there are basic consumer protection issues associated with the purchase of digital content products. These include information disclosures about the product characteristics and the availability of dispute resolution and redress mechanisms.

63. There are also more complex and specific questions associated with the purchase of digital content products. Providing consumers with certainty about what they can or cannot do with the digital products they purchase is indispensable to maintain confidence. Consumer usage of digital content products may be restricted by specific technology aimed to ensure legitimate content distribution, in line with consumer expectations, and thus to protect copyright holders' rights. Many hardware manufacturers, publishers, and copyright holders have introduced digital rights management (DRM) systems to control

how consumers access and use media and entertainment content. However, as indicated in a CCP report (OECD, 2006c, p. 11), consumers may, in some instances, not understand or be provided with insufficient, unclear, misleading or confusing information concerning usage restrictions. A lack of clear information on these restrictions may prevent consumers from being fully aware of their rights and obligations in purchasing the products. Issues include:

- **Play limitations.** In the case of downloaded music for example, as described in the 2006 CCP report, "...consumers who wish to change their music service providers or playback devices may have to repurchase the music files in a different format. In such a complex environment, consumers may not always know on which devices they may be able to play the purchased content" (OECD, 2006c, p. 8, 9). A recent trend towards fully interoperable download stores has, however, been taking place. Many services now offer their products free of DRM.
- **Copy limitations.** The digital products area raises intellectual property issues that are not always within the scope of consumer policy makers. Nonetheless, consumer rights and obligations regarding the distribution of content purchased on-line may neither always be clearly understood, nor adhered to by consumers. While most EU Member States provide in their legislation for private copying exceptions for non-commercial purposes (except in the United Kingdom and Ireland), the extent of these exceptions varies from country to country.
- **Privacy and security concerns.** The use of DRM technology may raise privacy and security concerns when the content protection software monitors users' preferences and collects personal information from them. Further, there are concerns about unwanted software and the potentially harmful effects on consumers' computers. In 2007, for example, the US FTC charged that the software installed on CDs, which monitored users' listening preferences without their consent, and exposed them to significant computer security risks, constituted an illegal and unfair commercial practice (US FTC, 2007).
- **Status of vendors.** Consumers, at the time they purchase digital content products, may encounter difficulties to establish whether the sellers of such products have distribution rights, or are breaching copyright laws. Thus consumers may face difficulty, and thereby legal uncertainty, with regard to their ability to determine whether the offer for a digital product is legitimate.
- **Geographic limitations.** By nature, the online environment should allow content services to be made available across borders. However, a lack of multi-territory copyright licences may prevent such a development. In its 2008 Policy Guidance for Digital Content, the OECD recommended that governments put in place policies that promote accessibility to digital content of all people regardless of location to realise the full benefits of the Internet economy (OECD, 2008h, p. 4). According to an EC issues paper (EC, 2008b), EU consumers seeking to buy, via the Internet, content that is protected by intellectual property rights are often only allowed to do so through online stores "located" in their country of residence. The availability of material, it noted, varies from country to country. While the matter is being addressed in an EU context, it continues to raise general concerns.

The participative Web: Consumer-driven content in e-commerce

64. Since the adoption of the 1999 Guidelines, the Internet has developed into a participative platform that empowers users to contribute to developing, rating, commenting on, and distributing digital content and customising Internet applications (OECD, 2007b); the development was first addressed by the CCP in a 2002 report (OECD, 2002a, p. 5). As a result, the Internet is now a vehicle through which large numbers of consumers worldwide can share their experiences with goods and services through social

networks, blogging and related exchanges, and online consumer reviews. The recent emergence of specialised social shopping networks and review sites is a sign that the influence of the web, and consumers themselves, will only be increasing in this regard.

65. However, as the participative web blurs traditional distinctions among businesses, consumers, and marketers, there are concerns about the transparency of the identity of web participants and their affiliations with products and services. There are also concerns about consumers' understanding of *i*) how their personal information may be used by site operators and other commercial entities, and *ii*) the terms under which they (consumers) are using these sites. Additionally, the participative web has resulted in the creation of virtual goods and services, which are bought and sold in a virtual world and some social networking sites. It is not always clear how consumer protection laws apply in these new environments. This is an area to which the OECD's Committee for Information, Computer and Communications Policy is turning its attention.

Issues for the Participative Web panel

- *In what ways might the disclosure provisions of the 1999 Guidelines need to be strengthened?*
- *Should such provisions apply to parties that evaluate products in participative web settings, especially when the parties have ties to the companies that produce or sell the products? If so, how could this be assured?*
- *How should consumer protection laws apply in the case of virtual goods and services?*

Consumer product reviews and ratings

66. Before purchasing a product, many shoppers check product reviews posted online. According to a 2007 study by Deloitte & Touche (US) (Biz Report, 2007), some 62% of US Internet users read product reviews written by other consumers and more than 8 out of 10 respondents who read these said that the reviews had affected their buying intentions: either they became more determined to buy the products or they changed their minds and bought different products altogether. Some online retailers report higher sales conversion rates as a result of customers' product reviews on their sites.

67. While consumer ratings and reviews are seen as promoting consumer interests by improving information flows and transparency, there are concerns that such evaluations could be manipulated by some market participants, thereby reducing their value. The US FTC has recently expressed growing concerns over misleading consumer ratings posted on online platforms, such as blogs. The agency issued revised guidelines on endorsements and testimonials, which make clear that consumer-generated media, such as blogs, must adhere to rules requiring disclosures about compensation (including free items, gifts, or cash) received from companies for the promotion of products when the consumer-generated statement is "sponsored" by an advertiser within the meaning of the guidelines (US FTC, 2009c).

Social networking

68. Social networks are platforms where persons can share information. A variety of social networking sites (SNS) have emerged in recent years. Among the most popular are Facebook, MySpace and Twitter. Most SNS are built upon the following model:

- Users are invited to provide personal data for the purpose of generating their profiles.
- They may post their own material (such as music, photos, or videos).
- SNS platforms provide a list of contacts for each user, and with which users can interact.
- They allow users to send messages to each other.
- Friends may also post events and invite guests.

69. Although a relatively recent phenomenon, the number of SNS users is multiplying at an exponential rate. According to ComScore's estimates, worldwide visitors to Twitter.com increased by 95% in the month of March 2009 from 9.8 million in February 2009 to 19.1 million (TechCrunch, 2009). In the United States, Facebook.com is a top 10 site that reaches over 91 million Americans per month. Businesses have recognised the importance of the SNS; a 2009 survey indicates that more than 90% of companies intend to invest in technology to have a presence on SNS and allow their brand and products to be identified on the web (*E-commerce Mag*, 2009). A similar conclusion was reached in a report released in June 2009 by the Social Media Council of the US Direct Marketing Association, which carried out a survey in April and May 2009 (DMA, 2009). In the United Kingdom, The number of adults signing up to social networking sites has almost doubled since 2007 (OFCOM, 2009a).

70. The growth in SNS has raised privacy concerns among consumer groups and privacy advocates, particularly with respect to the collection and use of consumers' personal information, without users' knowledge or consent. In its June 2009 Opinion, the EU 29 Working Party recommended increased scrutiny of third-party developers of applications designed for use on SNS (Article 29 Working Party, 2009).

Protecting children online

71. Since the 1999 Guidelines were issued, the accessibility of the Internet and mobile commerce to a growing number of children, and their increasing use of them through computers and mobile devices, have raised new opportunities and challenges for parents and businesses alike. Children are using the Internet for entertainment, games, information and research, and social networking, and are becoming adept at doing so at an early age (see Livingstone, S, and Haddon, 2009, p. 11 and OFCOM, 2009b). Recognising the shared responsibility of all parties to enhance children's safety online, many stakeholders are concerned, however, that the Internet and m-commerce may expose children to commercial content intended only for adults, allowing children to purchase unsuitable products (*e.g.* drugs, weaponry, alcohol, adult literature) and facilitating overspending through the purchase of goods or services, or by generating large network usage charges. The difficulty that adults have in monitoring mobile activity further complicates the situation. Others are concerned about aggressive advertising that targets children and business practices that elicit personal information from children. In addition to these issues, some stakeholders are concerned about inadequate age identification systems which make it difficult to determine whether buyers are minors. Although many of these issues are a subset of those discussed elsewhere in this report, they raise additional challenges for governments and stakeholders. The OECD has also become involved through work that the WPISP has recently undertaken.

Issues for the Children On-Line panel

- *What new consumer protection challenges do developments in e-commerce and m-commerce raise for children and their parents (and other care givers)?*
- *What challenges do they raise for businesses?*
- *What mechanisms exist to meet these challenges?*
- *In particular, what types of "special care" might be appropriate in marketing and advertising to children in e-commerce?*
- *What are the appropriate roles and responsibilities of on-line providers, e-commerce providers, Internet service providers, mobile operators, and vendors in this regard?*
- *What roles should parents, care givers, and children themselves play?*

Legal capacity to conclude commercial transactions

72. In most OECD countries, minors do not have legal capacity to enter into commercial transactions. As highlighted in the 2008 policy guidance on mobile commerce however, in practice, children purchase goods or services online, often in the absence of adult consent or knowledge (OECD, 2008e). Currently, many online retailers simply ask consumers to confirm their age by ticking a box without taking any other measures to verify whether the person meets the age criterion. The situation is of particular concern in the case of mobile commerce as credit cards may not be needed to make a purchase (the absence of a credit card would impede most children from purchasing items on other platforms). The absence of adequate age identification technology makes it difficult to verify the age of consumers.

Privacy concerns

73. Children's growing participation in social networking websites has raised privacy concerns as having a profile on a social network has become an essential part of their online lives. In the United Kingdom, according to OFCOM, among children with Internet access, more than a quarter of 8 to 11-year-olds claimed to have a profile page on a social networking website, despite nominal age restrictions aimed at preventing pre-teens from using such sites. On these platforms, children are often willing to provide personal information without their parents' consent in exchange for goods or services (OFCOM, 2008).

74. Most OECD countries do not have laws and regulations which specifically tackle privacy issues involving children. An exception is the United States, which passed the Children's Online Privacy Protection Act (COPPA), in 1998.

Education and awareness-raising initiatives

75. Protecting children online has become a key priority worldwide. Many initiatives at domestic, regional⁸ or international⁹ levels have been carried out to ensure co-ordinated efforts. In 2008, the ITU, for example, launched the Child Online Protection (COP) project, which includes guidelines aimed to educate children, parents, guardians and educators, policy makers and businesses about the many risks children are facing online.¹⁰ Within this framework, the ITU and Japan's Ministry of Internal Affairs and Communications (MIC) organised a *Strategic Dialogue on Safer Internet Environment for Children*, in June 2009.¹¹ The workshop provided a platform for policy makers, regulators, industry representatives, and academia to exchange good practices on key policy and strategy. The joint initiative recognised the need to enhance global co-operation on the protection of children online.

Accountability in e-commerce

76. The 1999 Guidelines on e-commerce, the 2003 Guidelines on cross-border fraud, and the 2007 Recommendation on consumer dispute resolution and redress recognise that consumer laws, policies, and practices limiting fraudulent, misleading and unfair commercial conduct are indispensable in building

⁸ See, for example, the EU's *Safer Internet Programme* at: http://ec.europa.eu/information_society/activities/sip/index_en.htm.

⁹ In April 2009, the OECD and APEC TEL Security and Prosperity Steering Group (SPSG) held a *Symposium on initiatives among member economies promoting a safer Internet environment for children*. The event aimed to share policy agendas and best practices for protecting children from online risks including security and privacy, as well as illegal or harmful online contents.

¹⁰ See: www.itu.int/osg/csd/cybersecurity/gca/cop/guidelines/index.html.

¹¹ See: www.itu.int/osg/csd/cybersecurity/gca/cop/meetings/2009-june-2-3.html.

consumer confidence and establishing a more balanced relationship between businesses and consumers in commercial transactions. To achieve these goals, governments and businesses have taken a range of actions to develop accountability in the e-commerce marketplace and build trust and security in online transactions.

Issues for the Accountable Web panel

- *What should governments do to achieve greater transparency with respect to the identities of sellers?*
- *How can protection against fraudulent and misleading Internet commercial practices be improved?*
- *What problems need to be addressed to ensure adequate consumer access to dispute resolution and redress mechanisms and enhance consumer confidence in such processes?*
- *What can be done on the enforcement front to combat unfair or illegal commercial practices more effectively?*
- *In which areas could cross-border enforcement co-operation be expanded?*
- *How can the capacity of government and other stakeholders to address cross-border issues be strengthened?*

Information disclosure about businesses

77. The 1999 Guidelines call for online businesses to “provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum ... prompt easy and effective consumer communication with the business.” While such information can be found on businesses’ websites, domain name registration information can also serve as a useful compliment. Law enforcement agencies and business typically use Whois services, a public directory of domain name information. The Internet Corporation for Assigned Names and Numbers (ICANN) is the non-profit body that co-ordinates, at the overall level, the global Internet’s systems of unique identifiers. This includes accrediting domain name registrars. ICANN’s Registrar Accreditation Agreement specifies that information about businesses must be accurate and publicly available online. In 2003, the Committee on Consumer Policy published a report highlighting the importance of accurate and available Whois data on businesses to help build consumer trust in the online marketplace (OECD, 2003).

Dispute resolution and redress

78. Effective dispute resolution and redress mechanisms are key to building trust as the lack of such mechanisms can inhibit consumers from taking full advantage of e-commerce. The situation is particularly important with respect to cross-border transactions where language and a lack of understanding of how domestic and foreign laws interact complicate matters. As reflected in a recent EU report, some 71% of surveyed consumers believed that it would be harder to resolve problems involving cross-border purchases, than would be the case with purchases made in a home country (EC, 2009b, p. 12).

79. Part II, Section VI of the 1999 Guidelines recognises the issue. It states that “consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.” Part II, Section V recommends putting schemes in place that limit liability for unauthorised use of payment systems, as well as chargeback mechanisms. These principles are re-affirmed in the 2007 Recommendation on Dispute Resolution and Redress (OECD, 2007a, Annex, Section II).

80. Stakeholders in a number of OECD countries have taken action on this front. In France, the *Forum des Droits de l’Internet* developed an online mediation system. In Mexico, an online platform,

Concilianet,¹² has been put in place to process consumer complaints from the moment of their submission to the settlement of the dispute. The online scheme provides an opportunity for real time interaction between the consumer, the supplier and the Consumer Protection Federal Agency (PROFECO). In 2003, the International Chamber of Commerce developed guidance for resolving B2C and C2C disputes on-line (ICC, 2003). The guidance calls for the business community to provide consumers with clear information about an online dispute resolution scheme, potential fees, time limitations, and information on binding and non-binding outcomes.

81. A number of mechanisms, applying to online and offline transactions, have been recently put in place in the EU to provide consumers with effective redress across EU borders. These include small claims procedures; and mediation. In its 2008 *Green Paper on Consumer Collective Redress* (EC, 2008c), the Commission further examined the possibility to establish collective action mechanisms, whereby a group of consumers affected by the same or similar infringement collectively bring action against a single trader.

Enforcement challenges

82. By its very nature, e-commerce represents a challenge for enforcement agencies whose powers are often constrained by jurisdictional boundaries. In their response to the e-commerce questionnaire, the United Kingdom indicated that it cannot currently act against infringements affecting non-EU consumers even if committed in the United Kingdom, because of legal restrictions (revisions to the law that would enable non-EU consumers to seek redress are being explored). Canada highlighted the need for countries to engage in reciprocal enforcement agreements with foreign enforcement agencies to effectively combat rogue traders in e-commerce. Some countries also noted the difficulty for consumer protection authorities to determine the location of an online seller. Such evidence gathering may be time consuming, costly and would require personnel trained in using the technology.

83. Some enforcement tools have been developed in recent years to enhance enforcement co-operation at domestic, regional and international levels. In the United States, as discussed above, the US FTC has obtained significant new powers to engage in information sharing and investigative assistance with its foreign counterparts pursuant to the US *Safe Web Act* of 2006. It has also confirmed its authority to bring suit in the United States when foreign consumers are harmed, and can recover monetary restitution on behalf of foreign as well as domestic consumers. Under the EU CPC Regulation, an IT system that permits communication between authorities (the CPCS) has been put in place. In a recent report highlighting the results of the effectiveness of the CPC Network, the EC concluded that the handling of cross-border cases is experiencing difficulties as a result of the authorities' administrative capacities, particularly with regard to the lack of resources available noting that the current economic crisis risks further aggravating this at a time when consistent enforcement is all the more important (EC, 2009e, p. 8). The Competition Bureau Canada launched *Project FairWeb*, a dedicated Internet surveillance and enforcement programme aimed at combating online deceptive advertising. Internationally, the ICPEN has continued to serve as a forum for consumer protection agencies to enhance enforcement co-operation.

¹² Available at: <http://concilianet.profeco.gob.mx/concilianet/faces/inicio.jsp>.

ANNEX I
1999 OECD GUIDELINES FOR CONSUMER PROTECTION IN THE CONTEXT OF
ELECTRONIC COMMERCE

Consumer laws, policies and practices limit fraudulent, misleading and unfair commercial conduct. Such protections are indispensable in building consumer confidence and establishing a more balanced relationship between businesses and consumers in commercial transactions. The inherently international nature of the digital networks and computer technologies that comprise the electronic marketplace requires a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework for electronic commerce. The global network environment challenges the abilities of each country or jurisdiction to adequately address issues related to consumer protection in the context of electronic commerce. Disparate national policies may impede the growth of electronic commerce, and as such, these consumer protection issues may be addressed most effectively through international consultation and co-operation. OECD member governments have recognised that internationally co-ordinated approaches may be needed to exchange information and establish a general understanding about how to address these issues. Governments are challenged to help facilitate social development and economic growth based on emerging network technologies, and to provide their citizens with effective and transparent consumer protection for electronic commerce. A variety of consumer protection laws exist that govern business practices. Many OECD Member countries have begun to review existing consumer protection laws and practices to determine whether or not changes need to be made to accommodate the unique aspects of electronic commerce. Member countries are also examining ways in which self-regulatory efforts can assist in providing effective and fair protection for consumers in that context. Reaching these objectives requires insight and input from throughout civil society, and all of these initiatives should be undertaken as part of a global co-operative effort among governments, business, consumers and their representatives. In April 1998, the OECD Committee on Consumer Policy began to develop a set of general guidelines to protect consumers participating in electronic commerce without erecting barriers to trade. These guidelines represent a recommendation to governments, businesses, consumers, and their representatives as to the core characteristics of effective consumer protection for electronic commerce. However, nothing contained herein should restrict any party from exceeding these guidelines nor preclude member countries from retaining or adopting more stringent provisions to protect consumers on-line. In particular, the purpose of the guidelines is to provide both a framework and a set of principles to assist:

i) Governments in reviewing, formulating and implementing consumer and law enforcement policies, practices, and regulations if necessary for effective consumer protection in the context of electronic commerce.

ii) Business associations, consumer groups and self-regulatory bodies, by providing guidance as to the core characteristics of effective consumer protection that should be considered in reviewing, formulating, and implementing self-regulatory schemes in the context of electronic commerce; and

iii) Individual businesses and consumers engaged in electronic commerce, by providing clear guidance as to the core characteristics of information disclosure and fair business practices that businesses should provide and consumers should expect in the context of electronic commerce.

In light of the above, the Council,

Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Ministerial Declaration on Consumer Protection in the Context of Electronic Commerce of 8-9 October 1998 [C(98)177 (Annex 2)];

Having regard to the Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data of 23 September 1980 [C(80)58(Final)], and the Ministerial Declaration on the Protection of Privacy on Global Networks of 8-9 October 1998 [C(98)177 (Annex 1)];

Having regard to the Ministerial Declaration on Authentication for Electronic Commerce of 8-9 October 1998 [(C98)177 (Annex 3)];

Having regard to the Recommendation of the Council concerning Guidelines for the Security of Information Systems of 26-27 November 1992 [C(92)188/FINAL)], and the OECD Recommendation concerning Guidelines on Cryptography Policy of 27 March 1997 [C(97)62/FINAL] ;

Recognising that electronic commerce may offer consumers new and substantial benefits, including convenience, access to a wide range of goods and services, and the ability to gather and compare information about such goods and services;

Recognising that certain special characteristics of electronic commerce, such as the ease and speed with which businesses and consumers can communicate about goods and services and engage in cross-border transactions, may create commercial situations which are unfamiliar to consumers and which may put their interests at risk, it is increasingly important for consumers and businesses to be informed and aware of their rights and obligations in the electronic marketplace;

Recognising that rules regarding applicable law and jurisdiction in the consumer context could have implications for a broad range of issues in electronic commerce, just as rules regarding applicable law and jurisdiction in other contexts could have implications for consumer protection; Recognising that consumer confidence in electronic commerce is enhanced by the continued development of transparent and effective consumer protection mechanisms that limit the presence of fraudulent, misleading or unfair commercial conduct online;

Considering that electronic commerce should be open and accessible to all consumers; and

Considering that governments, businesses, consumers and their representatives should devote special attention to the development of effective cross-border redress systems.

RECOMMENDS THAT MEMBER COUNTRIES:

Take the necessary steps to implement the relevant sections of the Guidelines contained in the Annex attached to this Recommendation;

Widely disseminate the Guidelines to all relevant governmental departments and agencies, to business sectors involved in electronic commerce, to consumer representatives, to the media, to educational institutions, and to other relevant public interest groups;

Encourage businesses, consumers, and their representatives to take an active role in promoting the implementation of the Guidelines at the international, national, and local levels;

Encourage governments, businesses, consumers and their representatives to participate in and consider the recommendations of ongoing examinations of rules regarding applicable law and jurisdiction;

Invite non-member countries to take account of the terms of this Recommendation in reviewing their consumer policies, initiatives and regulations;

Consult, co-operate, and facilitate information sharing among themselves and non-member countries, businesses, consumers, and their representatives, at both national and international levels, in providing effective consumer protection in the context of electronic commerce in accordance with the Guidelines;

Implement the Guidelines in a manner that encourages the development of new business models and technology applications that benefit consumers; and encourage consumers to take advantage of all tools available to strengthen their position as buyers; and

INSTRUCTS the Committee on Consumer Policy to exchange information on progress and experiences with respect to the implementation of this Recommendation, review that information and report to the Council in 2002, or sooner, and, as appropriate, thereafter.

GUIDELINES

Part One Scope

These Guidelines apply only to business-to-consumer electronic commerce and not to business-to-business transactions.

Part Two General Principles

I. Transparent and Effective Protection

Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.

Governments, businesses, consumers, and their representatives should work together to achieve such protection and determine what changes may be necessary to address the special circumstances of electronic commerce.

II. Fair Business, Advertising and Marketing Practices

Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.

Businesses should not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair.

Businesses selling, promoting or marketing goods or services to consumers should not engage in practices that are likely to cause unreasonable risk of harm to consumers.

Whenever businesses make information available about themselves or the goods or services they provide, they should present such information in a clear, conspicuous, accurate and easily accessible manner.

Businesses should comply with any representations they make regarding policies or practices relating to their transactions with consumers.

Businesses should take into account the global nature of electronic commerce and, wherever possible, should consider the various regulatory characteristics of the markets they target.

Businesses should not exploit the special characteristics of electronic commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.

Businesses should not use unfair contract terms. Advertising and marketing should be clearly identifiable as such. Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.

Businesses should be able to substantiate any express or implied representations as long as the representations are maintained, and for a reasonable time thereafter.

Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages. Where consumers have indicated that they do not want to receive unsolicited commercial e-mail messages, such choice should be respected. In a number of countries, unsolicited commercial e-mail is subject to specific legal or self-regulatory requirements.

Businesses should take special care in advertising or marketing that is targeted to children, the elderly, the seriously ill, and others who may not have the capacity to fully understand the information with which they are presented.

III. Online Disclosures

A. Information about the Business

Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum:

Identification of the business - including the legal name of the business and the name under which the business trades; the principal geographic address for the business; email address or other electronic means of contact, or telephone number; and, where applicable, an address for registration purposes and any relevant government registration or license numbers;

Prompt, easy and effective consumer communication with the business;

Appropriate and effective resolution of disputes;

Service of legal process; and

Location of the business and its principals by law enforcement and regulatory officials

Where a business publicises its membership in any relevant self-regulatory scheme, business association, dispute resolution organisation or other certification body, the business should provide consumers with appropriate contact details and an easy method of verifying that membership and of accessing the relevant codes and practices of the certification body.

B. Information about the Goods or Services

Businesses engaged in electronic commerce with consumers should provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an informed decision about whether to enter into the transaction and in a manner that makes it possible for consumers to maintain an adequate record of such information.

C. Information about the Transaction

Businesses engaged in electronic commerce should provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction.

Such information should be clear, accurate, easily accessible, and provided in a manner that gives consumers an adequate opportunity for review before entering into the transaction. Where more than one language is available to conduct a transaction, businesses should make available in those same languages all information necessary for consumers to make an informed decision about the transaction.

Businesses should provide consumers with a clear and full text of the relevant terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such information. Where applicable and appropriate given the transaction, such information should include the following:

- an itemisation of total costs collected and/or imposed by the business;

- notice of the existence of other routinely applicable costs to the consumer that are not collected and/or imposed by the business;

- terms of delivery or performance;

- terms, conditions, and methods of payment;

- restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, geographic or time restrictions;

- instructions for proper use including safety and health care warnings;

- information relating to available after-sales service

- details of and conditions related to withdrawal, termination, return, exchange, cancellation and/or refund policy information; and

- available warranties and guarantees.

All information that refers to costs should indicate the applicable currency.

IV. Confirmation Process

To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction. The consumer should be able to cancel the transaction before concluding the purchase.

V. Payment

Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

Limitations of liability for unauthorised or fraudulent use of payment systems, and chargeback mechanisms offer powerful tools to enhance consumer confidence and their development and use should be encouraged in the context of electronic commerce.

VI. Dispute Resolution and Redress

A. Applicable Law and Jurisdiction

Business-to-consumer cross-border transactions, whether carried out electronically or otherwise, are subject to the existing framework on applicable law and jurisdiction.

Electronic commerce poses challenges to this existing framework. Therefore, consideration should be given to whether the existing framework for applicable law and jurisdiction should be modified, or applied differently, to ensure effective and transparent consumer protection in the context of the continued growth of electronic commerce.

In considering whether to modify the existing framework, governments should seek to ensure that the framework provides fairness to consumers and business, facilitates electronic commerce, results in consumers having a level of protection not less than that afforded in other forms of commerce, and provides consumers with meaningful access to fair and timely dispute resolution and redress without undue cost or burden.

B. Alternative Dispute Resolution and Redress

Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.

Businesses, consumer representatives and governments should work together to continue to use and develop fair, effective and transparent self-regulatory and other policies and procedures, including alternative dispute resolution mechanisms, to address consumer complaints and to resolve consumer disputes arising from business-to-consumer electronic commerce, with special attention to cross-border transactions.

Businesses and consumer representatives should continue to establish fair, effective and transparent internal mechanisms to address and respond to consumer complaints and difficulties in a fair and timely manner and without undue cost or burden to the consumer. Consumers should be encouraged to take advantage of such mechanisms.

Businesses and consumer representatives should continue to establish co-operative self-regulatory programmes to address consumer complaints and to assist consumers in resolving disputes arising from business-to-consumer electronic commerce.

Businesses, consumer representatives and governments should work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost or burden to the consumer.

In implementing the above, businesses, consumer representatives and governments should employ information technologies innovatively and use them to enhance consumer awareness and freedom of choice.

In addition, further study is required to meet the objectives of Section VI at an international level.

VII. Privacy

Business-to-consumer electronic commerce should be conducted in accordance with the recognised privacy principles set out in the OECD Guidelines Governing the Protection of Privacy and Transborder Flow of Personal Data (1980), and taking into account the OECD Ministerial Declaration on the Protection of Privacy on Global Networks (1998), to provide appropriate and effective protection for consumers.

VIII. Education and Awareness

Governments, business and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision-making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities.

Governments, business, the media, educational institutions and consumer representatives should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks.

Governments, consumer representatives and businesses should work together to provide information to consumers and businesses globally about relevant consumer protection laws and remedies in an easily accessible and understandable form.

Part Three - Implementation

To achieve the purpose of this Recommendation, Member countries should at the national and international level, and in co-operation with businesses, consumers and their representatives:

review and, if necessary, promote self-regulatory practices and/or adopt and adapt laws and practices to make such laws and practices applicable to electronic commerce, having in mind the principles of technology and media neutrality;

encourage continued private sector leadership that includes the participation of consumer representatives in the development of effective self-regulatory mechanisms that contain specific, substantive rules for dispute resolution and compliance mechanisms;

encourage continued private sector leadership in the development of technology as a tool to protect and empower consumers;

promote the existence, purpose and contents of the Guidelines as widely as possible and encourage their use; and

facilitate consumers' ability to both access consumer education information and advice and to file complaints related to electronic commerce.

Part Four - Global Co-operation

In order to provide effective consumer protection in the context of global electronic commerce Member countries should:

Facilitate communication, co-operation, and, where appropriate the development and enforcement of joint initiatives at the international level among businesses, consumer representatives and governments.

Through their judicial, regulatory, and law enforcement authorities co-operate at the international level, as appropriate, through information exchange, co-ordination, communication, and joint action to combat cross-border fraudulent, misleading and unfair commercial conduct.

Make use of existing international networks and enter into bilateral and/or multilateral agreements or other arrangements as necessary and appropriate, to accomplish such co-operation.

Work toward building consensus, both at the national and international levels, on core consumer protections to further the goals of enhancing consumer confidence, ensuring predictability for businesses, and protecting consumers.

Co-operate and work toward developing agreements or other arrangements for the mutual recognition and enforcement of judgments resulting from disputes between consumers and businesses, and judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct.

ANNEX II

INTERNATIONAL AND REGIONAL CO-OPERATION SCHEMES IN RELATION TO E-COMMERCE

84. The ongoing lack of consumer protection harmonisation across countries has been identified by most respondents to the e-commerce questionnaire as a major barrier to a global e-commerce system. As recommended in the 1999 Guidelines (Part IV), businesses, consumer representatives and governments have worked towards establishing global co-operation schemes.

International, regional, and bilateral agreements

85. A number of agreements have been concluded among countries to enhance e-commerce policy and enforcement co-operation through information sharing, and assistance with investigations. These include Free Trade Agreements, Joint Statements, Memorandums of Understanding (MoU), partnerships, information sharing protocols, and specific alliances or fora. For example, Japan, Korea and China established a joint Consumer Policy Consultative meeting which, in 2009, recommended the establishment of a co-operation framework covering consumer transactions. Canada concluded Joint Statements on Electronic Commerce with respectively Australia, Costa Rica, and the EU. Canada also signed a MoU with the United Kingdom covering general enforcement and co-operation issues. Australia signed a MoU (the Seoul-Melbourne Multilateral Anti-spam Agreement) with a number of countries in the Asia-Pacific region on co-operation in countering spam.

Regional frameworks

The European Union's basic legal framework on e-commerce

86. In a 1999 Resolution, the EU Council, referring to the Ottawa Ministerial, agreed to “prepare common ... positions ... with regard to discussions ... on information-society issues ... and, in particular, the development of OECD guidelines on consumer protection in the context of electronic commerce.” In June 2000, the so-called EC Directive on e-commerce created a basic legal framework to *i)* remove obstacles to cross-border online transactions and *ii)* provide legal certainty to business and consumers. The Directive provides harmonised rules on transparency and online information requirements and recommends ensuring consistency between EU, OECD, WTO and UNCITRAL's e-commerce principles. As part of its review of the EU Acquis, in late 2008, the EC presented a Proposal for a Directive on Consumer Rights (EC, 2008a) which involves revising and consolidating EU Directives on distance contracts, doorstep sales, consumer sales and unfair contract terms. Through maximum harmonisation, the proposal aims to stimulate companies' offers across the Internal Market and promote consumer confidence. Discussed in 2009 at an EU consumer summit, it will be considered by the Council later this year.

The EU Consumer Protection Cooperation Network (EU CPC Network)

87. The EU CPC Regulation, which entered into force in January 2007 in all EU and EEA Member States, puts in place mechanisms for enforcement co-operation in an EU-wide network (“the CPC Network”) aimed to exchange information and prevent any cross-border breaches to consumer protection laws in areas including misleading advertising, timeshares and distance selling. Pursuant to the Regulation, a consumer protection co-operation system (CPCS) was established to allow EU authorities to exchange information and co-ordinate their enforcement actions. As pointed out by the Netherlands Consumer Authority (NCA) in their responses to the e-commerce questionnaire, most of the requests for assistance it received from foreign authorities within the CPC Network concerned e-commerce. In 2007, 15 EU

Member States and Norway conducted a sweep activity investigating 137 airline websites (representing about 80 companies). The sweep has recently proved successful in correcting 115 websites.

The Australasian Consumer Fraud Task Force (ACFTF)

88. The ACFTF is a group of 18 government regulatory agencies and departments from Australia and New Zealand responsible for consumer protection regarding frauds and scams. The Task Force runs the Consumer Awareness Month (CAM), a campaign educating consumers about scams. During the March 2006 CAM, the ACFTF focused on phishing scams, noting the lack of awareness among Australians who seem to be responding to these scams at a much higher rate than other countries.

The Trans Atlantic Consumer Dialogue (TACD)

89. Within TACD, US and EU consumer organisations develop joint consumer policy recommendations addressed to the US and EU authorities to promote consumers' interest in EU and US policy making. In recent years, TACD issued a number of e-commerce related resolutions on issues including ID theft, phishing and consumer confidence (2007) and social networking (2009).

The Asia-Pacific Economic Cooperation (APEC) forum

90. APEC's E-commerce Steering Group (ECSG) promotes the development and use of predictable e-commerce regulatory and policy environments in the region. In July 2000, at an ECSG's workshop on consumer protection, Australia reported on how the principles in the Guidelines should be implemented. In July 2009, APEC's Group on Services discussed the issue of liberalisation of trade in services and, in such perspective, consumer protection challenges. At the seminar, existing OECD instruments pertaining to dispute resolution and redress were examined.

International networks

The International Consumer Protection and Enforcement Network (ICPEN)

91. Through ICPEN, enforcement authorities exchange enforcement information. Its www.econsumer.gov website allows consumers to register cross-border e-commerce complaints and offers tips for safe online shopping. In 2001, ICPEN discussed the implementation of the 1999 Guidelines. In 2003, a joint meeting was organised with the CCP to identify cross-border fraud enforcement challenges, on the basis of which the 2003 Cross-border Fraud Guidelines were developed. The joint CCP/ICPEN meeting in April 2009 served to review the effectiveness of the 1999 Guidelines.

The London Action Plan (LAP)

92. The LAP is a global network of governments and private sector representatives aimed to combat spam. It was developed in 2004 and now includes participants from more than 20 countries, including more than 30 government agencies and 20 private sector representatives.

The Messaging Anti-Abuse Working Group (MAAWG)

93. MAAWG focuses on preserving electronic messaging from online abuse such as spam and virus attacks. In 2007, MAAWG issued a Sender Best Communications Practices with input from ISPs.

Digital Phish Net (DPN)

94. Through DPN, ISPs, auction sites, financial institutions, and law enforcement agencies share statistics and best practice to tackle phishing and other threats to assist with identification and prosecution.

International organisations***The International Organization for Standardization's Committee on Consumer Policy (ISO COPOLCO)***

95. The ISO, on COPOLCO's proposals, has developed the following e-commerce standards:

- ISO/IEC 27001 (2005) on protecting the confidentiality, integrity and availability of information such as individuals' bank accounts and health and defence data.
- ISO 10002 on complaint handling.
- ISO 10001 (2007) which provides guidance for planning, designing, developing, implementing, maintaining and improving customer satisfaction codes of conduct.
- ISO 10003 (2007) which provides guidelines for an organisation to develop, operate, maintain and improve an effective dispute-resolution process for complaints that have not been resolved by the organisation.

96. In 2009, the organisation recommended the adoption of guidelines for B2C e-commerce transactions, which are being examined by ISO's Technical Committee (176/SC3) on Quality Management and Quality Assurance - Supporting Technologies. The standard provides principles in designing, developing, implementing and improving an effective and measurable B2C e-commerce decision-making process within an organisation of all sizes in all sectors to improve consumer confidence in e-commerce. It aims to enhance the ability of organisations to meet the terms of codes, standards and certification approaches to B2C e-commerce that exist in various jurisdictions. It refers to existing standards that were also developed by ISO TC 176/SC3 upon COPOLCO's proposals and to the 1999 Guidelines.

The United Nations Commission on International Trade Law (UNCITRAL)

97. In 1998, UNCITRAL's Model Law on Electronic Commerce established rules aimed to help countries resolve legal uncertainties in the electronic environment. The Law contains requirements for writing and signatures in electronic transactions, and the admissibility of electronic transactions as evidence. In 2001, UNCITRAL published a Model Law on Electronic Signatures to assist UN Member States in developing or enhancing legislation on the use of authentication. Based on the two instruments, in 2004 UNCITRAL further developed a Convention on the Use of Electronic Communications in International Contracts providing ground rules for the performance of e-commerce contracts concluded among businesses. Recently, the organisation published a report on the need to promote confidence in e-commerce through the use of electronic authentication and signature methods (UNCITRAL, 2009).

The United Nations Conference on Trade (UNCTAD)

98. UNCTAD provides its Member countries with training and capacity building on the legal aspects of e-commerce. It offers a wide range of advisory services aimed to assist in the preparation of an enabling legal and regulatory environment for e-commerce in developing countries. UNCTAD also provides policy advice to *i)* help assess the needs for law reform in light of e-commerce developments; *ii)* draft e-commerce legislation based on international model laws or guidelines such as the 1999 Guidelines;

iii) raise awareness on legal issues of interest to developing countries by publishing analytical studies¹³ such as an annual Information Economy Report, formerly called the E-Commerce and Development Report.

The World Trade Organisation (WTO)

99. In 1998, WTO members developed a Declaration on Global Electronic Commerce, which calls for the establishment of a work programme to examine all trade-related issues in relation to e-commerce. Taking into account the many e-commerce cross-cutting issues, various WTO Councils were set up to explore the effect of e-commerce on global trade. One main issue was the disagreement of some WTO members over the classification, for WTO purposes, of digitised products as either services (falling under the WTO's General Agreement on Tariff and Services), or goods (covered by the WTO's GATT).

¹³ For more information see: http://r0.unctad.org/ecommerce/ecommerce_en/docs_en.htm.

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