

GLOBAL BUSINESS DIALOGUE ON ELECTRONIC COMMERCE



SUMMARY OF RECOMMENDATIONS AFFECTING CONSUMER CONFIDENCE

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INTRODUCTION

Electronic commerce is inherently global and, more than ever before, this means that the legitimate interests of consumers must be addressed globally as well. Electronic commerce depends on building consumer confidence – ensuring that their interests will be protected wherever the customer and the merchant may be located in physical space.

The global nature of electronic commerce allows us to cross borders with ease and online purchases often involve transactions between strangers. How can a customer know whether a business on a Web site will complete its orders for goods and services as it claims? Will the online merchant allow the return of goods or honor product warranties? Will information exchanged with the web site remain secure and private? What happens if something goes wrong?

These are not questions that can be answered by governments alone. These concerns cannot be addressed by consulting the laws of one nation or region, no matter who enthusiastically it seeks to extend that law beyond its borders. Recognizing this gap, the GBDe is making one of the first truly global efforts to provide consumers with assurances that will be implemented around the world.

As part of its workplan for 2000, the GBDe, set up three working groups on consumer confidence to examine Trustmarks, Privacy/Personal Data Protection and Alternative Dispute Resolution systems (ADRs). The successful results of these efforts are concrete guidelines to businesses and specific recommendations to governments designed to achieve a high level of trust in global electronic transactions.

ALTERNATIVE DISPUTE RESOLUTION

Taking consumer complaints seriously

Electronic commerce, especially with consumers in one country buying goods or services from businesses based in other countries, will grow unabatedly only if consumers feel confident that their interests are sufficiently protected in the case of disputes.

Business adhering to GBDe guidelines commit to provide consumers with fair, transparent, timely, and affordable means to settle disputes and obtain redress.

As a first and preferred remedy in any dispute, Internet customers will be offered access to in-house customer satisfaction systems. Unless full customer satisfaction is guaranteed by such in-house systems, potential customers will be notified on the merchants' website that the merchant is ready to submit disputes resulting from online transactions to one or

more specified Alternative Dispute Resolution (ADR) systems. Information on the ADR systems offered and on general conditions like their cost, the legal nature of the ADR (arbitration, mediation, conciliation, negotiation, etc.) and of its outcome (binding/not binding/binding for the merchant; enforceable) will be easily accessible to the consumer. Should consumers be dissatisfied with the results of the ADR process, in general, their right to seek legal redress will be preserved.

GBDe supports ADR systems as an attractive alternative to cumbersome, lengthy and costly court proceedings.

Recourse to courts in disputes resulting from international Internet transactions is often complicated by the difficult questions of which law applies, and which authorities have jurisdiction over such disputes. Furthermore, international court proceedings can be expensive, often exceeding the value of the goods or services in dispute. If these were the only means to settle disputes, it would certainly not enhance consumer confidence in international electronic commerce and would strongly induce merchants to restrict the geographic scope of their offers. This, in turn, would limit competition and consumer choice. ADR systems are more flexible and creative in finding solutions that satisfy both parties, while courts may offer only limited remedies in resolving disputes, particularly where law or regulations prescribe those remedies.

Satisfactory results will be achieved quicker than through court proceedings. And easily accessible published rules of procedure that describe unambiguously all relevant elements will enable customers seeking redress to take fully informed decisions on whether they wish to use the ADR offered or address themselves directly to a court of law.

The GBDe urges governments to adopt policies, which allow ADR systems to properly function on a regional and global level.

Many governments share the GBDe position that ADR is an essential element for the proper functioning of e-commerce and for the enhancement of consumer confidence in this medium. Hence, the GBDe expects governments to adopt policy stances in line with this goal and to refrain from imposing mandatory national or regional accreditation criteria or criteria which distort competition between national and international ADR systems and make it difficult for them to function properly across borders. Governments should permit and promote the development of ADR mechanisms by the private sector, without discrimination. Further, the development of international self-regulatory principles and rules are the basis for vendor declarations of compliance should be supported by governments and ADR systems should be allowed to function on the basis of equity, codes of conduct, or other rules agreed by the parties.

Data Protection

Electronic commerce is inherently global. Increasingly this means that the legitimate interests of consumers must be addressed on a global basis as well. Electronic commerce

depends on consumer confidence that their interests will be protected – wherever the consumer and the merchant may be located in physical space.

This is not a problem that can be solved by governments alone. To take one example, consumers are understandably concerned about what happens to personal data supplied in the course of an electronic transaction. This concern cannot be addressed by consulting the laws of one nation or region, no matter who enthusiastically it seeks to extend that law beyond its borders.

Recognizing this gap, the GBDe is making one of the first truly global efforts to provide consumers with assurances that will be implemented around the world. The GBDe Guidelines on Personal Data Protection were created by a global task force to provide consumers with worldwide assurances about how their personal data will be protected by e-commerce participants.

The Guidelines establish a global baseline of minimum protections that the GBDe companies propose to provide to e-commerce consumers, no matter where they are located and no matter what local laws may or may not require. They do not, of course, supersede the laws of countries that impose more stringent data protection requirements.

The Guidelines establish several fundamental protections for consumers' personal data:

Consumers will receive notice of the policies of electronic commerce companies toward use of personal data and an assurance that their data will not be used for purposes that have not been disclosed to them.

Once the company's policies have been disclosed, consumers will be given an opportunity to "opt out" of the companies' proposed uses. (For sensitive data like medical records, companies will only utilize the information if the consumer unambiguously "opts in" to the companies' policy.)

Consumers' personal data will be protected in a secure fashion, and the steps taken to protect that data will be included in the notice to consumers.

Consumers will have "one-stop shopping" for their privacy concerns – a contact point for questions, concerns or complaints about a company's personal data protection policies.

Children will receive the highest protection; companies will not intentionally use or disclose information about children without the permission of the parent or guardian.

TRUSTMARKS

Trustmark programs are privately developed initiatives that have been developed by different organizations, including private businesses, consumer groups and professional organizations to respond to these concerns. Most operate on a national or regional basis.

The GBDe believes that Trustmark programs can play an essential role by encouraging good online business practices by merchants and by helping consumers identify merchants they can trust. For such programs to be effective, however, they must be

developed and operate in accordance with minimum, voluntary guidelines to help ensure comparable levels of protection among competing programs and greater transparency for consumers.

Accordingly, the GBDe has developed guidelines for those companies or organizations developing e-commerce Trustmark programs, including the minimum standards of practice they should require of the online merchants they certify. These voluntary guidelines are intended to supplement, but would not replace or in any way alter, obligations that may be imposed on a merchant by consumer protection, privacy or other legislation in different national jurisdictions.

An effective, reliable Trustmark program must be affordable, be enforced rigorously and deal effectively with any complaints about the merchants it certifies.

Trustmarks can help small businesses with little brand recognition gain the trust of consumers. Therefore, Trustmark programs must be affordable and open to participation by all businesses. They must back up what they promise with effective systems for monitoring compliance by merchants and for impartial and objective enforcement. They also must be able to deal with complaints, either by offering or requiring the merchant to offer, a mechanism to resolve customer disputes.

Trustmark programs must reflect the interests of all stakeholders, remain flexible to changing requirements and should cooperate with programs in other countries or regions.

A Trustmark program must be developed in full consultation with consumer, industry or professional organizations if it is to gain consumer trust and confidence. Interested parties must be encouraged to provide input on the operation of the system, consumers' satisfaction with the program should be monitored systematically and changes should be made as appropriate. For this reason, the GBDe is committed to reviewing its Trustmark guidelines with consumer groups and others during the coming year, with a view to ensuring they respond to the needs of all stakeholders.

To help consumers identify reliable merchants in foreign jurisdictions and to encourage comparable levels of consumer protection across national boundaries, Trustmark programs should develop mutual recognition or similar arrangements with programs offering equivalent levels of protection in other jurisdictions.

Trustmark programs must ensure that a merchant's business practices relating to electronic commerce transactions are disclosed to consumers.

Merchants must ensure that all information, including information on their business and the goods or services available for purchase, is clear, accurate and easily accessible online. Any representation about a good or service must not be misleading to consumers. Special care must be taken with respect to marketing activities directed at children and transactions with children must only be completed with parental permission.

Merchants must ensure that customer's orders are completed and billed as agreed.

Merchants must make available all relevant information relating to the terms and conditions, costs, shipping and charging and cancellation, return or refund policies applicable to a transaction before it is entered into. They must provide the customer with an opportunity to review the transaction before it is completed and becomes a binding obligation. Merchants also must maintain an adequate record of the transaction after it has been completed to deal with customer inquiries.

Merchants must take reasonable steps, consistent with current industry practices, to protect the security of information.

Merchants should have industry standard levels of encryption for the transfer of financial transaction or other sensitive information and security for data maintained by computers.

Merchants must disclose and adhere to a privacy policy that is open, transparent and consistent with fair information principles.

Merchants must provide notice as to what information they collect, use and disclose to third parties and for what purposes, as well as the choices they provide to consumers with respect to such collection, use or disclosure. At a minimum, consumers must be given the opportunity to opt out of the sharing of such information with third parties.

They also must provide notice as to what access consumers have to such information, provide mechanisms for the correction of inaccurate information, state how they protect such information and disclose how their privacy policies are enforced and what redress is available to consumers in case of violation.

Merchants must disclose their business practices with respect to their use of unsolicited e-mail.

Merchants that engage in unsolicited e-mail marketing must disclose this and maintain a policy that, at a minimum, enables consumers to opt out of future e-mail solicitations.

Merchants must provide consumers with fair, timely and affordable means to settle disputes and obtain redress.

Merchants must disclose information regarding customer service and comply with all commitments, representations or other promises made regarding their online purchases. They also must provide information on how a consumer can contact them to solve any problem relating to a transaction, maintain effective systems to deal with complaints and seek to resolve any disputes in a fair and equitable manner.

Unless full customer satisfaction is guaranteed by an in-house customer satisfaction system, the merchant should offer to submit an unresolved dispute to one or more specified alternative dispute resolution systems.

Governments should encourage the development of competing Trustmark programs and avoid premature attempts to harmonize such programs.

At present only a few Trustmark programs are being used and are widely known. Governments should play an active role in encouraging their development.

However, such programs should remain private sector initiatives. Provided such programs satisfy minimum requirements, such as those set out by the GBDe guidelines, competition among programs should be encouraged to promote innovation, respond to differing local or industry sector requirements and ultimately enhance consumer confidence and choice.