

Summary of Public Workshop

Alternative Dispute Resolution
for Consumer Transactions in the
Borderless Online Marketplace
June 6-7, 2000



FEDERAL TRADE COMMISSION
DEPARTMENT OF COMMERCE

November 2000

TABLE OF CONTENTS

INTRODUCTION	1
OVERVIEW	2
FINDING GLOBAL SOLUTIONS	3
Language and Cultural Barriers	3
Unfamiliarity	3
Government Approaches	4
Substantive Legal Rules	4
PURSUING TECHNOLOGICAL INNOVATION	4
New Options	4
Efficiency	5
Security	5
Challenges	5
PURSUING MULTIPLE TYPES OF ADR PROGRAMS	5
ENSURING FAIRNESS AND EFFECTIVENESS	6
Impartiality	7
Cost	8
Accessibility	9
Transparent Disclosures	9
Timeliness	10
Binding v. Non-Binding	10
CONSUMER AND BUSINESS EDUCATION	11
ACTION AGAINST FRAUDULENT OR DECEPTIVE PRACTICES	11
CONCLUSION	12
ENDNOTES	13

Introduction

The electronic marketplace, which has opened the door to international business-to-consumer transactions on an unprecedented scale, has created enormous benefits and efficiencies. For consumers, it offers 24-hour access to sellers around the globe; for businesses, it offers access to a worldwide market. This online marketplace also has created challenges; among them, how best to resolve disputes involving cross-border consumer transactions. Consumers must be confident that they will have access to redress for problems arising in the online marketplace. In many instances, consumers face unique difficulties in resolving problems arising from online transactions, such as language and cultural differences, inconvenience and expense that may result from the distance between the parties, and problems with litigation, including difficulties in establishing jurisdiction, determining the applicable law, and enforcing judgments. In addition to facing similar burdens, businesses must determine where they could be subject to jurisdiction and which laws might apply to them, which could significantly increase the cost of doing business online. Alternatives to litigation are needed if participants in this new marketplace are to have confidence that they will have access to redress when transactions go awry.

One way to address business and consumer concerns regarding dispute resolution for online transactions is to develop effective programs for alternative dispute resolution (“ADR”). ADR refers to out-of-court methods for resolving disputes, including negotiation, mediation and arbitration.¹ To explore ADR for online consumer transactions, the Federal Trade Commission (“FTC”) and Department of Commerce (“DOC”) hosted a public workshop on June 6-7, 2000. Over 120 representatives from academia, consumer groups, industry, and government filed 47 comments² and attended the workshop. Participants³ examined existing and developing ADR programs, incentives and disincentives to use ADR, how to make ADR fair and effective, and the roles of stakeholders, including consumers, businesses and governments, in developing and implementing ADR programs.

This report summarizes the issues identified at the workshop and the common themes that emerged. It also highlights areas where there appears to be general agreement, as well as the areas that need further consideration.

Overview

In general, there was broad support among workshop participants for the development of ADR programs to resolve online global disputes in consumer transactions.⁴ Participants recognized ADR's many benefits. For example, while courts are inherently rooted in a particular location and based on notions of territorial jurisdiction,⁵ ADR programs can facilitate resolution of disputes for parties who do not live in the same jurisdiction and do not live close to the same courthouse.⁶ An online ADR program could resolve disputes between a Kansas consumer and a Korean business, just as it can resolve disputes between parties located next door to each other. ADR programs also can be simpler, quicker and less expensive than courts.⁷

Specifically, workshop participants agreed that continued cooperation among stakeholders, including businesses, consumer representatives and governments, is essential.⁸ Participants recommended stakeholder cooperation in each of the following areas:

- ! **Finding global solutions to address global transactions:** This process is already underway. Several companies are pursuing multilingual ADR mechanisms and international partnerships for conducting ADR.⁹ Some businesses, consumer groups, and governments already have begun cooperative activities in the ADR field.¹⁰
- ! **Pursuing technological innovation:** The workshop showcased the dozens of emerging ADR providers, which have taken advantage of various technologies to provide new options to consumers. Participants agreed that industry should continue to develop new ADR programs in consultation with consumer groups and to report to governments on their development.¹¹
- ! **Pursuing multiple ADR programs:** The workshop demonstrated that "one-size does not fit all" and that participants should work together to create different types of ADR programs suitable for different types of disputes.¹² Already a variety of programs are developing, including blind bidding systems, online mediation and online arbitration.¹³
- ! **Ensuring fairness and effectiveness of ADR programs:** Participants agreed that stakeholders should work together to ensure that ADR programs are fair and effective.¹⁴ In ensuring fairness and effectiveness, stakeholders should make sure that ADR programs are impartial, free or low cost, accessible, transparent and quick.¹⁵ Participants disagreed on some specifics of these elements and how they operate in practice, as noted below. Workshop discussions also suggested that there should be a balance between fairness and effectiveness. For example, if too many procedural rules were added to a program in an attempt to make it fair, the program could be too expensive to be effective.¹⁶ Several groups such as the American Arbitration Association, the European Commission and the Better Business Bureau are working to promote fairness and effectiveness by developing codes of conduct for online ADR.¹⁷

- ! **Consumer and business education:** Participants agreed that all stakeholders should work together to promote consumer and business education about seal programs, codes of conduct and ADR.¹⁸ Forums such as the DOC/FTC ADR workshop can go a long way toward understanding the emerging ADR systems, exploring the many difficult issues in this area, and publicizing the availability of ADR for businesses and consumers.¹⁹
- ! **Action against fraudulent and deceptive practices related to ADR:** Companies have indicated support for working with law enforcement to combat fraudulent and deceptive ADR practices. Discussions are underway for ADR providers to refer complaints to law enforcement agencies.²⁰

Participants were not of one mind on four primary issues: (1) what rules of decision should apply to ADR programs (page 4); (2) the appropriate roles of governments and other stakeholders in ensuring the fairness and effectiveness of ADR programs (page 7); (3) whether ADR results should be public (page 10); and (4) whether ADR programs should be binding, mandatory or voluntary (page 10-11).

Finding Global Solutions to Address Global Transactions

Even though ADR can transcend geographical barriers, there are other potential barriers to successful dispute resolution. For example, language and cultural barriers could exist.²¹ Consumers could lack confidence in unfamiliar ADR programs located in a foreign country.²² Moreover, if countries have substantially different regulatory frameworks for ADR, businesses and ADR providers could choose to avoid learning a patchwork of regulatory schemes and restrict their programs to domestic consumers.²³ Finally, in cross-border disputes, it is unclear what substantive legal rules should govern ADR programs.²⁴ Workshop participants described activities underway to meet these challenges.

Language and Cultural Barriers

Several existing ADR providers are exploring options to overcome the language barrier.²⁵ eResolution offers services in both English and French.²⁶ SquareTrade has conducted a mediation in German and is conducting another mediation involving a Spanish-English translation.²⁷ Both SquareTrade and CyberSettle found it easy to locate skilled mediators around the world to conduct mediations in different languages.²⁸ iCourthouse plans to offer translation modules at their site.²⁹ Mediation and Arbitration Referral Service (“MARS”) advocates the use of third-party interpreter services when disputes cross national borders.³⁰

Unfamiliarity

Another challenge to global ADR is that ADR providers located abroad could be unfamiliar to consumers.³¹ The Council of Better Business Bureaus (“BBB”) suggested one solution: capitalizing on local name recognition and developing international partnerships among well-known ADR providers in different locations. To this end, BBB is exploring partnerships with

other international groups.³² In fact, BBB has entered into an agreement with a major privacy trustmark program in Japan, under which BBB and the Japanese program plan to roll out a new seal that could be placed on Web sites that meet certain standards.³³

Government Approaches

Yet another challenge to global ADR involves differences in government approaches for ADR.³⁴ Government participants at the workshop expressed their commitment to share information and participate in dialogues toward internationally compatible approaches.³⁵ European Commission representatives expressed their commitment to work closely with the U.S. government on ADR.³⁶

Substantive Legal Rules

A final challenge to global ADR is differences in legal rules governing consumer contracts: In cross-border cases, what laws should ADR providers apply to a given dispute?³⁷ Some participants focused on whether ADR providers should apply the law of the consumer or the law of the merchant to a particular dispute.³⁸ Other participants made creative suggestions for avoiding this question. For example, some suggested that mediation was more appropriate for cross-border disputes than arbitration because mediators do not decide cases based on a particular law; rather, parties themselves create a resolution.³⁹ Another participant suggested that mediators should explore the parties' respective interests and goals, rather than what rights they had under law.⁴⁰ Yet another participant said that ADR programs could have their own rules of decision, not necessarily based on a particular country's law.⁴¹ Finally, one participant suggested that an international common law of consumer protection could develop. He stated that in the domain name dispute resolution context, online ADR providers have decided over 400 cases, and new cases are relying on this body of precedent; the same could happen in the consumer protection context.⁴²

Pursuing Technological Innovation

Workshop participants recognized that technological innovation can enhance the benefits of ADR, especially for long-distance disputes, by providing new options, increased efficiency and enhanced security. Technology also poses new challenges.

New Options

Technology provides new ADR options for consumers.⁴³ Innovative online ADR providers demonstrated some of these options. For example, CyberSettle uses technology that can "split the difference" between blind offers and demands submitted through the Internet, generate state-specific settlement documents, and send money to a claimant within "a nanosecond" through smart card technology.⁴⁴ iCourthouse can perform a "mock trial" entirely online.⁴⁵ Online Disputes.org uses a fully automated system that allows member businesses to specify automatic dispute handling rules, so that the consumer can get an immediate response from the business tailored to the specific complaint.⁴⁶

Efficiency

Technology also can promote efficiency in ADR programs. For example, the BBB Autoline system saves time and money by receiving a growing number of complaints online and increasingly responding to consumers via e-mail.⁴⁷ Technological innovation can also assist in case management, by providing organized case pages, so that mediators and arbitrators can handle disputes in a cost-effective manner.⁴⁸ Finally, technology also can allow providers to build scalable solutions to accommodate different marketplaces and variable numbers of mediators.⁴⁹

Security

Technological innovation has resulted in an increased ability to keep information confidential.⁵⁰ Moreover, it can reassure consumers that companies are who they say they are. For example, by controlling its seal from servers located in a secure facility, SquareTrade ensures that people cannot simply copy the seal and post it on their Web site.⁵¹ Finally, technology also can provide consumers with greater access to information about ADR providers generally.⁵²

Challenges

Technology also poses challenges. For example, technology has eliminated the need for a face-to-face meeting. Some participants, however, suggested that offline mediation works well because of the personal interaction involved.⁵³ Accordingly, one participant suggested that it could be necessary to supplement online procedures with face-to-face meetings.⁵⁴ Other participants pointed out that technology itself can provide a solution: videoconferencing and webcasting could provide some face-to-face interaction.⁵⁵ Other participants disputed the necessity of face-to-face interaction, noting that technology could have a beneficial effect on ADR by “erecting a safety wall” and making the consumer less intimidated than he or she would be with a face-to-face interaction.⁵⁶ Moreover, the ability to conduct online mediation could lower the tension level between the parties.⁵⁷

Pursuing Multiple Types of ADR Programs

Workshop participants noted that different types of transactions will benefit from different types of ADR programs.⁵⁸ The workshop highlighted the emergence of many different ADR models suited for the online environment. Companies like Online Mediators, eResolution, and SquareTrade feature online complaint forms and third-party mediators who employ e-mail and organized case-development processes to mediate disputes between the parties.⁵⁹ Companies like CyberSettle, ClicknSettle, CyberSolve and Settlement Now have developed an entirely automated system for disputes involving cash settlements.⁶⁰ OnLine Disputes.org resolves disputes according to automated rules.⁶¹ And iCourthouse, an online jury trial system, allows parties to select a jury to decide their case in an entirely virtual courtroom.⁶²

Participants suggested that the costs and cost allocation of ADR programs should vary, depending on the transaction involved.⁶³ Several participants suggested that ADR programs addressing

business-to-consumer disputes should be cheaper than ADR programs addressing business-to-business disputes.⁶⁴ Recognizing this difference, Online Mediators has two internal pricing models. For business-to-business transactions, dispute resolution costs are split between the parties. For business-to-consumer disputes, businesses pay an annual fee and refer all disputes to Online Mediators, with no charge for the consumer.⁶⁵

Similarly, several participants suggested that procedural rules should vary depending on the size and nature of the dispute. For small value disputes, fewer procedural rules would be appropriate and less costly.⁶⁶ One participant stated that procedural rules for ADR should depend on the parties involved. He suggested that there is a spectrum of disputes -- (1) disputes involving parties in positions of equal bargaining power; (2) business-to-consumer disputes; and (3) formal adjudications and arbitrations -- and that at the lower end of the spectrum, the fewer rules, the better.⁶⁷

Another participant stated that the amount of information provided to consumers could differ, depending on the type of ADR process involved. For example, a mandatory dispute resolution process requires more detailed disclosures than a purely voluntary process.⁶⁸

Yet another participant pointed out that entirely different forms of dispute resolution might be appropriate for different types of disputes: arbitration has worked in the domain name context, an automated negotiation process has worked for insurance disputes, and in the online auction context, mediation could be preferable.⁶⁹ This theme was echoed by MARS, an ADR provider that offers three different types of ADR services -- a traditional ADR program, a blind bidding settlement program, and a fast track online ADR program.⁷⁰

Finally, participants noted that internal mechanisms also exist to settle disputes. America Online's ("AOL") Certified Merchant Program is a self-described "dispute avoidance" program by which AOL guarantees to make the consumer whole if a dispute arises with any AOL-certified merchant.⁷¹ In another example, the online merchant eMusic stated that it settles consumer disputes simply by refunding the customer's money or replacing the products free of charge.⁷² Participants suggested that these internal mechanisms could co-exist with third-party dispute resolution services.⁷³

Ensuring Fairness and Effectiveness

Participants agreed that, to build consumer confidence in ADR, ADR programs should be fair and effective.⁷⁴ This is especially important for online dispute resolution, where parties cannot personally evaluate the mediator, arbitrator or the other party.⁷⁵ Discussions at the workshop also suggested that there should be a balance between fairness and effectiveness. For example, if too many procedural rules were added to a program in an attempt to make it fair, the program could

be too expensive or burdensome to be effective.⁷⁶

Although participants agreed that stakeholders should work together to ensure fair and effective ADR programs,⁷⁷ they disagreed on the appropriate roles for stakeholders in this area. Some participants expressed the view that governments should take the lead in developing a baseline set of principles to ensure that all ADR mechanisms have at least certain basic qualities in common.⁷⁸ These participants stated that allowing governments to set a “floor” for ADR guidelines would guarantee fairness and effectiveness in all ADR programs, even if many different ADR models emerge.⁷⁹ One such model in the United States is the Magnuson-Moss Warranty Act, which statutorily sets minimum requirements for dispute resolution programs addressing warranty disputes.⁸⁰

Other participants, however, cautioned against government involvement in establishing guidelines for ADR, stating that premature regulation by some governments⁸¹ and government-set guidelines could inhibit the development of innovative programs.⁸² These participants asserted that private sector-led development of codes of conduct would be the best approach.⁸³

Some suggested government certification of ADR programs that met government-set accreditation criteria so that consumers easily could recognize which ADR programs were fair and effective.⁸⁴ Under this proposal, a government seal could be displayed on Web sites so that consumers would know which Web sites met the government accreditation criteria. Others were opposed to the idea of government certification on the basis that certification could hinder the development of innovative programs.⁸⁵

Participants generally agreed that ensuring fairness and effectiveness of ADR programs meant ensuring impartiality of the program, no or low cost to the consumer, accessibility, transparency and timeliness. They disagreed on definitions of some of these elements and how they operate in practice, as noted below. They also disagreed on whether binding or mandatory ADR programs could be fair and effective for consumers, as explained below.

Impartiality

Several participants stated that an essential element of fairness is impartiality.⁸⁶ Some participants stressed that ADR programs should not only be impartial in practice, but also in perception; consumers will lose confidence in an ADR mechanism perceived as biased toward business, whether that perception is accurate or not.⁸⁷ For example, ADR providers involved in a pilot project for eBay noted that many consumers equated the ADR providers with eBay, even though the Web site clearly stated that the providers were from the University of Massachusetts.⁸⁸ Conversely, the perception that courts are unbiased could be one reason the public has confidence in them.⁸⁹

One related issue discussed at the workshop was whether ADR providers should be “independent.” Some suggested that impartiality could be achieved only where ADR systems are separate and independent from the business, operate in consultation with consumer organizations,

and involve ADR personnel that have no direct interest in the disputes or parties involved.⁹⁰ Others suggested that the focus be more on impartiality than independence.⁹¹ For example, several participants noted that companies often provide internal customer service programs, and consumers know that it is the company that is providing the dispute resolution.⁹² These participants stated that, even though such internal programs are not “independent,” they still can provide fair and effective dispute resolution.⁹³

Although participants agreed on the importance of impartiality, they disagreed on how to ensure it. One participant stated that mediators and arbitrators should be accredited and trained to maintain their neutrality.⁹⁴ Others argued that neutrals should adhere to a set of minimum standards.⁹⁵ Another participant stated that neither standards nor accreditation was necessary; the market would gravitate away from biased ADR programs that did not enjoy consumer confidence.⁹⁶

Cost

Generally, participants agreed that ADR mechanisms should be available at low cost to consumers.⁹⁷ ADR will be ineffective if it costs more than the value of the dispute.⁹⁸ One key benefit of ADR, after all, is that it can be less expensive than the court system.⁹⁹ Consumers and businesses looking to ADR often are trying to avoid the prohibitive costs of the traditional court system.¹⁰⁰

Some participants suggested that ADR for small value disputes should be free to consumers, with the costs absorbed by some other entity.¹⁰¹ Several existing programs are free of charge for consumers. For example, BBB of New York’s program is free for consumers, with the charges for dispute resolution assessed on the business community as a whole, rather than on any individual business.¹⁰² National BBB programs are also free of charge to consumers.¹⁰³ Other online models being developed, such as OnLineDisputes.org and Online Mediators, would also be free to the consumer, while charging a set fee for businesses.¹⁰⁴ iCourthouse is free of charge to all disputants and earns revenues through other programs.¹⁰⁵ Many ADR systems in Europe are free to the consumer and funded by the government or independent bodies.¹⁰⁶

Some participants disagreed with the idea of a free process for consumers, noting that it could encourage frivolous claims.¹⁰⁷ These participants suggested that costs be kept low, commensurate with the value of the dispute.¹⁰⁸

Another concern with the idea of a free ADR program for consumers was its impact on impartiality. Specifically, if businesses fund ADR programs that are free or of low cost to the consumer, how can impartiality of the ADR program be insured?¹⁰⁹ Participants suggested ways to address this concern. One existing program uses purely volunteer mediators, who, because they are not paid, are not monetarily tied to one party.¹¹⁰ Another idea was to have an insurance-based model: for each transaction in a given industry, a small amount of money could be placed into a pool, and costs from the pool would cover ADR expenses.¹¹¹ Yet other participants suggested that consumer selection of the neutral could mitigate concerns about independence if

the company pays.¹¹²

Accessibility

Participants agreed that dispute resolution programs should be easily accessible to consumers.¹¹³ They should be easy to find and easy to use.

ADR programs are not useful to consumers if consumers cannot find them. One of the reasons cited for failure of an ADR site called the Virtual Magistrate was that nobody could find it.¹¹⁴ Similarly, one participant noted that many consumers are not aware of dispute resolution services provided by payment card companies.¹¹⁵

Participants agreed that companies should publicize ADR programs.¹¹⁶ One concern expressed was that companies might be reluctant to admit they have customer service problems. Highlighting the availability of ADR mechanisms would draw attention to such problems.¹¹⁷ Participants rejected this concern and encouraged companies to view the availability of dispute resolution services as an added attraction for consumers and to prominently display information about their services.¹¹⁸

Participants identified several ways to make it easier for consumers to find ADR programs. Businesses can link customers with a dispute mechanism when the consumer complains.¹¹⁹ They can display a recognizable seal up front so that consumers know they will have access to redress in case something goes wrong.¹²⁰ They can link to ADR services on multiple areas of an e-commerce site.¹²¹ One participant suggested that government and consumer group Web sites should link to ADR systems as well.¹²²

Another aspect of accessibility is ease of use. Participants noted that a key advantage of ADR is that there are fewer barriers to its use than there are with court-based systems.¹²³ Disputants in court often need lawyers or legal expertise, whereas disputants using simpler ADR processes might not.¹²⁴ ADR also does not have the same legal barriers to entry as courts. Courts require a demonstration of the basis for jurisdiction and standing; ADR programs do not.¹²⁵

Transparent Disclosures

Participants supported conspicuous up-front disclosures about ADR processes before a consumer is asked to agree to them.¹²⁶ Many participants stated that disclosure will allow consumers to know what they are getting into, including the potential benefits and drawbacks of a particular program.¹²⁷ Additionally, disclosure will allow consumers to choose the most appropriate program.¹²⁸

As for what disclosures should be made, both consumer and business representatives suggested that information about the types of disputes referred, procedural and substantive rules, costs, and manner of decisionmaking be disclosed.¹²⁹ Certain participants suggested that there be a statement of impartiality¹³⁰ and a statement telling the consumer at the outset what would happen if a settlement were reached.¹³¹ Consumer groups further suggested that information about

languages and enforceability of decisions be provided.¹³²

One area in which participants differed was over disclosure of an ADR provider's "track record." Some believed that statistical information about an ADR program should be disclosed publicly, so that consumers could make informed decisions about which ADR systems to use.¹³³ Another participant expressed concern that, to the extent the results of ADR processes become public, businesses could be inhibited from settling disputes for fear of setting an adverse precedent.¹³⁴

Timeliness

Participants stated that ADR should be conducted in a timely manner, taking into account the complexity of the dispute.¹³⁵ One participant suggested that there should be reasonable time limits for considering disputes, rendering decisions, and complying with decisions.¹³⁶ Existing ADR providers stated that they are attempting to render timely decisions. For example, CyberSettle can settle disputes within minutes.¹³⁷ SquareTrade noted that its disputes are resolved in a matter of weeks.¹³⁸ In the offline world, the BBB program dealing with automobile warranty disputes generally schedules an arbitration hearing within 17 days of the filing of a complaint.¹³⁹ The manufacturer has 30 days to implement the decision.¹⁴⁰ BBB of New York generally resolves disputes within six to eight weeks,¹⁴¹ while the International Chamber of Commerce has a four-week period for making decisions.¹⁴²

Binding v. Non-Binding

One fairness issue over which there was little agreement was whether ADR programs should be permitted to be binding and/or mandatory. Binding arbitration programs are final decisions that may not be appealed by the parties, except in very limited circumstances. In the United States, courts permit use of binding arbitration clauses in consumer contracts, as long as such clauses are not unconscionable.¹⁴³ In Europe, such clauses are generally not enforced.¹⁴⁴

Some participants argued in favor of businesses being permitted to bind consumers to arbitration decisions before a dispute arises. These participants argued that such clauses are fair for consumers because they lower costs for consumers and preserve consumer choice.¹⁴⁵ They also cited advantages of binding arbitration, including certainty, finality, efficiency and low cost.¹⁴⁶ Finally, they cited to surveys showing consumer satisfaction with binding arbitration.¹⁴⁷

Other participants supported mandatory but not binding arbitration clauses, under which consumers would be required to exhaust the ADR option provided, but could still go to court if not satisfied with the result.¹⁴⁸ According to these participants, consumers would be no worse off by being required to go through ADR. Businesses would have a greater incentive to offer ADR, knowing that most disputes could be settled under this process.¹⁴⁹

Finally, several participants opposed both binding and mandatory arbitration clauses. Opponents of binding arbitration clauses argued that such programs were unfair¹⁵⁰ and not agreed to knowingly by consumers.¹⁵¹ Opponents of mandatory arbitration argued that such processes could cause unjust delay and discourage consumers from seeking redress.¹⁵² Opponents of both

binding and mandatory arbitration argued that ADR programs should be purely voluntary because ADR programs could then compete for consumers, which would enable the best ADR programs to emerge.¹⁵³ Concerns were also expressed that binding and mandatory arbitration programs could preclude consumers from bringing class action lawsuits.¹⁵⁴

Consumer and Business Education

Too many consumers and businesses are not familiar with ADR.¹⁵⁵ Workshop participants suggested that all stakeholders, including governments, industry and consumer advocates,¹⁵⁶ should continue to educate consumers and businesses about ADR programs.¹⁵⁷

Participants suggested that consumers should be taught to look for what ADR options are available, so that they can make informed decisions about whether or not to do business with a particular company on the basis of the ADR offered.¹⁵⁸ Participants also suggested that consumers should be educated about all of their redress rights, not just ADR.¹⁵⁹ For example, they should be aware of how ADR programs interact with court processes and at what stage it is appropriate to use each of them.¹⁶⁰ They should also know that they can file complaints with state and local consumer protection organizations or other nonprofit organizations.¹⁶¹

Participants agreed that businesses should be educated on the benefits of incorporating dispute resolution into their practices¹⁶² through forums such as the DOC/FTC workshop¹⁶³ and through Web sites and appropriate links.¹⁶⁴

Action Against Fraudulent or Deceptive Practices Related to ADR

As one participant noted, “Internet fraud needs to be addressed quickly and sternly to make this a good medium where people feel comfortable to shop.”¹⁶⁵ Participants agreed that law enforcers should continue to be vigorous in prosecuting fraud and deception on two fronts related to ADR.

First, participants agreed that law enforcers should prosecute companies that breach promises to adhere to particular ADR standards, codes of conduct, or seal programs.¹⁶⁶

Second, participants agreed that private ADR providers should cooperate with law enforcement officials and share complaints so that fraud can be detected and prosecuted.¹⁶⁷ Several organizations already contribute data about Internet fraud and deception to the FTC.¹⁶⁸ For example, the National Consumers League and many Better Business Bureaus contribute consumer complaint data to Consumer Sentinel, a joint database and law enforcement tool available to over 240 law enforcement agencies in the United States, Canada and Australia. These agencies use the information to take action against fraud and deception.¹⁶⁹

Participants suggested that this information-sharing initiative could be expanded so that ADR providers could share complaints.¹⁷⁰ Efforts are already underway in this regard. For example, SquareTrade has proposed to pass information on possibly fraudulent or deceptive businesses to the FTC.¹⁷¹

Conclusion

In going forward, workshop participants agreed that continued cooperation among stakeholders, including businesses, consumer representatives and governments, in pursuing each of the goals described above is essential.¹⁷² Staff of the U.S. Department of Commerce and the Federal Trade Commission are committed to working with stakeholders in these areas.

Endnotes

1. Transcript from the Federal Trade Commission/Department of Commerce Public Workshop on “Alternative Dispute Resolution for Online Consumer Transactions,” testimony by Carol Izumi, June 6, at 20-28. There is a transcript for the main session of the Workshop proceedings and three transcripts of three separate breakout sessions that took place at the Workshop. These transcripts are available at <<http://www.ftc.gov/bcp/altdisresolution/transcripts.htm>>. Throughout this document, references to the main session transcript will include the last name of the participant and the relevant page numbers, *e.g.*, Izumi at 20-28. References to the breakout sessions will include the breakout session number, the last name of the participant and the relevant page numbers, *e.g.*, Breakout 1, Bhojani at 52.
2. The Federal Trade Commission and Department of Commerce issued a Federal Register notice on February 16, 2000, which sought public comments in this matter. *See* 65 *Fed. Reg.* 7831 (February 16, 2000). Two subsequent notices were published, providing further information regarding comment submission and details about the Workshop. *See* 65 *Fed. Reg.* 18,032 (April 6, 2000) and 65 *Fed. Reg.* 36,888 (June 12, 2000). The notices generated 36 public comments prior to the Workshop and 11 public comments after the Workshop. These public comments can be found at <<http://www.ftc.gov/bcp/altdisresolution/comments/index.htm>>. Throughout this document, references to comments submitted prior to the workshop will include the name of the entity or last name of the individual that submitted the comment followed by “Comment” and the relevant page number, *e.g.*, Katsh Comment at 2. References to comments submitted after the workshop will include the name of the entity that submitted the comment followed by “Post-Workshop Comment” followed by the relevant page number, *e.g.*, Drahozal Post-Workshop Comment at 4.
3. The term “participants” includes entities that submitted comments and those who attended the workshop.
4. Cochetti at 189; WebMediate Comment at 1; U.S. Council on International Business (USCIB) Comment at 1; Consumer Federation of America (CFA) Comment at 1; Better Business Bureau (BBB) Comment at 1; Dell Comment at 1; Internet Consumers Organization Comment at 1; International Association of Professional Negotiators (IAPN) Comment at 1.
5. Katsh Comment at 2; USCIB Comment at 7.
6. Abernethy at 137; Carblanc at 218; IAPN Comment at 4; WebMediate Comment at 9; Web Dispute Resolutions Comment at 8; MIRC Comment at 7; iCourthouse Comment at 2; CyberSettle Comment at 3; eResolution Comment at 9.
7. Izumi at 21-22; Abernethy at 80; Medine at 160; Torres at 200; Grant at 426
8. *E.g.*, Perritt at 42; Benyekhleif at 279; Welsh at 333; Donahey at 436; Bodoff at 464; Bhojani at 486.

9. Abernethy at 135; Burchetta at 135-36; Long at 136; Mediation Information and Resource Center/Online Mediators (MIRC) Comment at 13; BBB Comment at 16; eResolution Comment at 3; Mediation Arbitration Resolution Services (MARS) Comment at 2.
10. Fenhoulet at 464-65; Bell at 17; Bodoff at 463; Ministry of International Trade and Industry (MITI) Comment at 3.
11. *E.g.*, Bernstein at 509; *See also* Bodoff at 462-63; Breakout 1, Skehan at 37; Breakout 1, Bhojani at 38; Breakout 1, Willikens at 41-42.
12. *E.g.*, Welsh at 303; Leighton at 309; Katsh at 237; Katsh Comment at 2.
13. *See* MIRC Comment at 3-5.
14. *E.g.*, Yasunaga at 216; Bell at 176-77; Jean Baker at 282.
15. *See* discussion on pages 7-10.
16. Jean Baker at 240.
17. Jean Baker at 240; Bell at 179-80; Better Business Bureau (BBB) Post-Workshop Comment at 2.
18. *E.g.*, Rule at 234; Ryan Baker at 255-56; Keller & Heckman Comment at 9 (citing role of governments); Gray at 266-67 (citing role of governments and businesses); Ellis at 213 (citing role of consumer advocates).
19. Breakout 1, Pike at 43; MIRC Comment at 14; BBB Post Workshop Comment at 9.
20. Abernethy at 132-33; Schrader at 163-64; Bodoff at 488-90; Breakout 3, Cooper at 28-29.
21. Underhill at 64; Bell at 179; Femenia at 318-19; Benyekhlef at 279; BBB Comment at 14; Web Dispute Resolutions Comment at 2.
22. BBB Comment at 9.
23. MIRC Comment at 13; BBB Comment at 16.
24. Stevenson at 302.
25. This report attempts to summarize the state of the world as it was at the time of the workshop. The online ADR field is a dynamic one, and some of the information contained in this report may have changed in the few months since the workshop took place.
26. eResolution Comment at 3.

27. Abernethy at 135.
28. Abernethy at 135; Burchetta at 135-36.
29. Long at 136.
30. MARS Comment at 2.
31. BBB Comment at 9.
32. BBB at 67.
33. Bodoff at 463; MITI Comment at 3.
34. MIRC Comment at 13; BBB Comment at 16.
35. *E.g.*, Fenhoulet at 464-65; Bell at 173; Bhojani at 486-487; Breakout 1, Bhojani at 54; Bernstein at 510.
36. Bell at 173, 177; European Commission (EC) Comment at 1.
37. Stevenson at 302.
38. Weissman at 347; Leo Burnett Comment at 4.
39. Abernethy at 138; Sullivan at 341.
40. Izumi at 27. *See also* Sullivan at 341.
41. Leighton at 348. *See also* Sullivan at 341.
42. Donahey at 364-65.
43. Pincus at 7; Sullivan at 326; Bernstein at 509; Long at 111-12; Pomerance at 337. *See generally* Cybersettle Comment.
44. Burchetta at 100.
45. Long at 111-12.
46. Pomerance at 337.
47. Underhill at 60-61.
48. SquareTrade Comment at 2; eResolution Comment at 3; Underhill at 65.
49. Abernethy at 71; SquareTrade Comment at 3; MIRC Comment at 7.

50. eResolution Comment at 7.
51. Abernethy at 84.
52. Sullivan at 327.
53. Bickerman at 313; Sellers at 261; Sullivan at 326.
54. Sellers at 261-62.
55. Turner at 291; Sullivan at 326; Keller & Heckman Comment at 8.
56. Ryan Baker at 262. *See also* Sellers at 290.
57. Sellers at 264.
58. *E.g.*, Katsh Comment at 2; Welsh at 303; Leighton at 309; Katsh at 237; Wallis at 371.
59. Abernethy at 68; MIRC Comment at 4; eResolution Comment at 3.
60. Burchetta at 85; MIRC Comment at 4.
61. Pomerance at 337.
62. Long at 108.
63. *E.g.*, Katsh at 239; Welsh at 305; Brennan at 307-08; MIRC Comment at 6.
64. *E.g.*, Welsh at 305; Brennan at 307-08.
65. MIRC Comment at 6.
66. Bickerman at 310-11.
67. Leighton at 309.
68. Brown at 271-72.
69. Katsh Comment at 2.
70. MARS Comment at 1.
71. Lesser at 196.
72. Harter at 208.
73. *E.g.*, Schumach at 502 (describing discussion in Breakout 3); Wallis at 371.

74. *E.g.*, Baker at 280-81; Torres at 200-01; Turner at 278; Bickerman at 310; National Association of Consumer Agency Administrators (NACAA) Comment at 2; National Consumers League (NCL) Post-Workshop Comment at 1; CFA Comment at 3.
75. Sellers at 260.
76. Jean Baker at 240.
77. *E.g.*, Yasunaga at 216; Bell at 176-77; Jean Baker at 282.
78. Torres at 231-32; Mierzwinski at 471; CFA Comment at 3; NCL Post-Workshop Comment at 1.
79. Rule at 233; Budnitz at 451. *See also* NCL Post-Workshop Comment at 1; BBB Comment at 18; CFA Comment at 3; SquareTrade Comment at 5.
80. 15 U.S.C. § § 2301-2312.
81. Donahey at 435.
82. Breakout 1, Skehan at 50; Bodoff at 461; eResolution Comment at 8; Keller & Heckman Comment at 9.
83. Donahey at 436; Bodoff at 461.
84. Breakout 3, Cooper at 28; BBB Comment at 18.
85. Breakout 1, Skehan at 50.
86. *E.g.*, Yasunaga at 216; NCL Post-Workshop Comment at 5; Dell Comment at 3; BBB Comment at 8; NACAA Comment at 2; CFA Comment at 3 (setting forth recommendations of TransAtlantic Consumer Dialogue); eResolution Comment at 2; MITI Comment at 3.
87. Breakout 1, Bhojani at 8; Foskett at 8; Bushey at 10; Mithal at 498-99 (reporting on results of Breakout Session 1).
88. Katsh at 252-53.
89. Gunn at 258.
90. CFA Comment at 3 (presenting recommendations of TransAtlantic Consumer Dialogue); NCL Post-Workshop Comment at 5.
91. Breakout 1, Skehan at 7; Breakout 3, Sellers at 11.
92. *E.g.*, Lesser at 194-196; Harter at 205; Turner at 250; Katsh at 252; Leighton at 361-62.

93. Schumach at 502 (describing discussion in Breakout 3).
94. Gunn at 258.
95. Brown at 245; Breakout 3, Torres at 27.
96. Katsh at 253.
97. *E.g.*, Perritt at 39; Bickerman at 311; CFA Comment at 6; NCL Post-Workshop Comment at 4.
98. Bickerman at 311; Connecticut Attorney General Comment at 3-4.
99. Perritt at 36; WebMediate Comment at 4; MITI Comment at 2.
100. Underhill at 66-67.
101. Burchetta at 104-05; Plessner at 406.
102. Brown at 243.
103. BBB Comment at 13.
104. OnLineDisputes.org Comment at 1; MIRC Comment at 6.
105. Long at 122.
106. Breakout 2, Kessedjian at 47.
107. Turner at 251; Breakout 2, Cherry Lisco at 50-51.
108. *Id.*
109. Fienberg at 458; Breakout 1, Foskett at 4; MITI Comment at 4.
110. Brown at 245.
111. Benyekhlef at 257.
112. Breakout 3, Bland at 17; Breakout 3, Budnitz at 19-20; MARS Comment at 1.
113. *E.g.*, Wallis at 370; Leighton at 308; Abernethy at 75; Yasunaga at 216; Foskett at 268-69; NCL Post-Workshop Comment at 4; BBB Comment at 9; eResolution Comment at 3; MITI Comment at 3. Perritt at 39 (noting that they must be able to “find the courthouse”)
114. Perritt at 39.

115. Fox at 155.
116. *E.g.*, Ryan Baker at 272-73; MIRC Comment at 11.
117. Katsh at 274-75.
118. *E.g.*, Ryan Baker at 272-73; Abernethy at 131.
119. Underhill at 55-56.
120. E-Commerce and Consumer Protection Group Comment at 16.
121. Abernethy at 75.
122. CFA Comment at 2.
123. *E.g.*, Izumi at 22; WebMediate Comment at 6-7.
124. Long at 133-34.
125. Izumi at 22; WebMediate Comment at 6-7.
126. WebMediate Comment at 7; NCL Post-Workshop Comment at 3; BBB Comment at 8; NACAA Comment at 1-2; SquareTrade Comment at 4; MIRC Comment at 5; Cybersettle Comment at 3; eResolution Comment at 3-4; MITI Comment at 3-4; Keller & Heckman Comment at 8.
127. *E.g.*, Gray at 266-67; Breakout 3, Yasunaga at 32; NACAA Comment at 1-2.
128. Yasunaga at 216.
129. Electronic Commerce and Consumer Protection Group Comment at 16; Dell Comment at 3-4; CFA Comment at 3 (setting forth recommendations of TransAtlantic Consumer Dialogue).
130. *E.g.*, Jean Baker at 270-71; Breakout 3, Schumach at 8.
131. Jean Baker at 270-71. Benyekhlef at 279; Electronic Commerce and Consumer Protection Group Comment at 16.
132. CFA Comment at 3 (setting forth recommendations of the TransAtlantic Consumer Dialogue).
133. Pomerance at 338, 350; Breakout 3, Budnitz at 19-20; NCL Post-Workshop Comment at 7; Electronic Commerce and Consumer Protection Group Comment at 16; Dell Comment at 3.
134. Leighton at 351-52.

135. Burchetta at 88-89; Breakout 3, Grant at 43; Breakout 3, Torres at 44-45; NCL Post-Workshop Comment at 4-5; Electronic Commerce and Consumer Protection Group Comment at 16; BBB Comment at 10. *See also* Plesser at 410; CFA Comment at 4; CyberSettle Comment at 6; USCIB Comment at 3; MITI Comment at 3 (emphasizing the importance of timeliness).
136. CFA Comment at 4 (setting forth recommendations of TransAtlantic Consumer Dialogue).
137. *See* CyberSettle Comment (describing how CyberSettle works).
138. Breakout 2, Cherry Lisco at 21.
139. Underhill at 58.
140. Underhill at 60.
141. BBB of New York Comment at 2.
142. Breakout 3, Johnson at 45.
143. Bland at 376.
144. European Commission Comment at 9; Wallis at 371; BBB Comment at 19.
145. Mogilnicki at 374; Ware at 385; NAF Comment at 3. *See generally* Wilmer, Cutler & Pickering Comment; Ware Comment; Drahozal Comment.
146. *Id.*
147. *Id.*
148. Plesser at 383; Cochetti at 189; Electronic Commerce and Consumer Protection Group Comment at 15-16; Dell Comment at 2-3.
149. Plesser at 383-84; Dell Comment at 2.
150. Bland at 377; Public Citizen Comment at 1; Connecticut Attorney General Comment at 4.
151. Sakamoto-Wengel at 388; Budnitz Comment at 3; CFA Comment at 2. *See generally* Public Citizen Comment.
152. *E.g.*, Bland at 401-03; NCL Post-Workshop Comment at 3.
153. Grant at 381-82; Bland at 402; NCL Post Comment at 3; NACAA Comment at 1. *See generally* American Trial Lawyers Association Comment; Trial Lawyers for Public Justice Comment.

154. Bland at 381; Grant at 396; Vail at 398.
155. Abernethy at 75; WebMediate at 10; MITI Comment at 2; IAPN Comment at 4; National Arbitration Forum Comment at 5; Web Dispute Resolutions Comment at 9; MIRC Comment at 8; CyberSettle Comment at 5-6.
156. *E.g.*, Rule at 234, Baker at 255-56; Gray at 266-67 (citing role of governments and businesses); Ellis at 213 (citing role of consumer advocates); Keller & Heckman Comment at 9 (citing role of governments).
157. Bhojani at 441; Bodoff at 444-45, 491; Gunn at 258; Breakout 1, Foskett at 8-9; IAPN Comment at 6; IAPN Post-Workshop Comment at 1; Ellis Comment at 2; Web Dispute Resolutions Comment at 12; Diaz Comment at 1; MIRC Comment at 5; Gray Comment at 2; CyberSettle Comment at 6; Ellis Post Workshop Comment at 2; Breakout 1, Pike at 15.
158. Abernethy at 75; Gunn at 269; Yasunaga at 216; Fox at 165, Gray at 265-66; Breakout 1, Skehan at 13; Breakout 1, Seswein at 14.
159. Gunn at 257; IAPN Post Workshop Comment at 1.
160. Gunn at 257.
161. Breakout 1, Bushey at 19.
162. Rule at 193. *See also* Bodoff at 491; Mithal at 499 (reporting on Breakout Session 1); WebMediate Comment at 4.
163. Breakout 1, Pike at 43; MIRC Comment at 14; BBB Post Workshop Comment at 9
164. Breakout 1, Willkens at 41; Breakout 1, Skehan at 37, Breakout 1, Pomerance at 39-40; Breakout 1, Bhojani at 38; Breakout 1, Foskett at 45.
165. Schrader at 158.
166. Bodoff at 445-46, 490; Budnitz at 451; Stevenson at 495; Skehan at 452; Mierzwinski at 456; BBB Comment at 19; BBB Post-Workshop Comment at 9; CyberSettle Comment at 8; MIRC Comment at 12.
167. Schrader at 163-64; Friedkin at 354; Breakout 3, Cooper at 28-29.
168. Bodoff at 488-89.
169. Stevenson at 47.
170. *E.g.*, Friedkin at 354; Abernethy at 132-33.

171. Abernethy at 132-33.

172. *E.g.*, Perritt at 42; Benyekhlef at 279; Welsh at 333; Donahey at 436; Bodoff at 464; Bhojani at 486.