

**BUILDING TRUST IN THE ONLINE ENVIRONMENT:
BUSINESS TO CONSUMER DISPUTE RESOLUTION**

JOINT CONFERENCE OF THE OECD, HCOPI, ICC
The Crowne Plaza Promenade Hotel
The Hague
11-12 December 2000

INTRODUCTION

1. The online environment is playing an important role in the global market. Both consumers and business will derive significant benefit from online interactions. With these benefits and the expected increase of business-to-consumer (B2C) national and international interactions, come new challenges. Of particular significance are the challenges of identifying the competent forum and applicable law, and of obtaining redress across borders. Given that traditional dispute settlement mechanisms may not provide effective redress for electronic commerce interactions, there is a need to examine alternative mechanisms, both those in existence and under development.

2. Online alternative dispute resolution mechanisms hold the promise of providing speedy, low cost redress for a large number of the small claims and low-value transactions arising from B2C online interactions. In addition, new and developing technologies might continuously provide innovative and potentially more effective dispute resolution, either alone or in combination with existing mechanisms.

3. The OECD will consider these issues in a Conference on B2C Online Dispute Resolution that is co-organised with the Hague Conference on Private International Law and the International Chamber of Commerce (ICC). The views of consumers will be represented by Consumers International (CI).

4. Within the OECD, the conference is organised by the ICCP Working Party on Information Security and Privacy (WPISP) and the Committee for Consumer Policy (CCP), in co-operation with the OECD Business and Industry Advisory Committee (BIAC).

Objectives and methodology

5. The conference has two objectives:

- To provide an opportunity for presenting, understanding, discussing and disseminating information on the diverse range of existing online alternative dispute resolution mechanisms (ADR), building on discussions and information shared at various international fora to date.
- To explore how online ADR can help improve trust for global electronic commerce by providing appropriate and effective mechanisms for B2C disputes arising from privacy and consumer protection issues.

6. To this end, the conference will explore how to facilitate the development and implementation of fair and effective ADR mechanisms to provide redress for users and consumers by identifying and discussing what stakeholders consider:

- Incentives and disincentives for businesses, consumers, and governments to participate in and/or encourage the use of ADR.
- Important elements for fair and effective online ADR mechanisms (recognising that these elements, which are of various types (legal, technical and procedural), may vary depending on the type of mechanism and/or disputes).
- Challenges to be addressed to facilitate ADR mechanisms at both a national and global level.

7. The conference has been organised to facilitate discussions with the audience in each of the sessions, through presentations and active participation of panellists, as well as question/answer and comments from the audience, under the guidance of moderators. A wide range of stakeholders, including representatives of business, consumers, privacy, government and academics will participate in the conference.

8. An Orientation Document for the Conference will be drafted by the OECD Secretariat to provide a short description of each session, including questions to be considered and information on the presenters, moderators and panellists. Also included in the Orientation Document will be a list of possible legal, technical and procedural characteristics of ADR programs for the online environment. This will be developed by the Conference organisers.

CONFERENCE AGENDA

DAY 1: OVERVIEW OF ADR IN RELATION TO THE ONLINE ENVIRONMENT

09.00 – 9.55

Welcome and Keynote

Welcome remarks,

A.H Korthals, Minister of Justice, The Netherlands (invited)

Why is ADR a key element for building trust in the online environment?

Herwig Schlögl, Deputy Secretary-General, Organisation for Economic Co-operation and Development (confirmed)

Speech

Maria Livanos Cattai, Secretary General, International Chamber of Commerce (confirmed)

Speech

Hans van Loon, Secretary General, Hague Conference on Private International Law (confirmed)

9.55 – 10.00

Introduction

Introductory Remarks by Day 1 Chair,

Peter Ford, Chair, OECD Working Party on Information Security and Privacy (confirmed)

10.00 – 11.00

Session 1: Overview of recent discussions about online ADR

In an effort to provide a forum, at a global level, for exploration of ADR and to foster co-operation among the stakeholders, this session takes stock of the work that has been undertaken on this issue by other fora. Representatives from the United States, EU, APEC, GBDe, and CI are invited to present the findings from their fora's examinations of online ADR.

Moderator: Risaburo Nezu, Director, Directorate for Science, Technology and Industry
OECD (*confirmed*)

Presenters: Agne Pantelouri OR Carina Tornblom, DG Sanco (EC) (*invited*)

Jodie Bernstein, Director, Bureau of Consumer Protection, United States
Federal Trade Commission (US) (*invited*)

Yuko Yasunaga, Deputy Director, Commerce Policy Division, Ministry of
International Trade and Industry (APEC) (*confirmed*)

Constanze Picking, Senior Manager Trade and E-Business, DaimlerChrysler AG (GBDe) *(confirmed)*

Louise Sylvan, Vice President, Consumers International (CI/TACD) *(confirmed)*

11.00 – 11.30 **Coffee**

11.30 – 12.00 **Session 2: Illustrating possible B2C complaints in the online environment**

This session will provide examples through online demonstrations and statistics of the types of complaints arising from B2C electronic interaction in the areas of privacy and consumer protection.

Presenters: Wibo Koole, Head of Consumer Policy Department, Consumentenbond NL *(confirmed)*

Stephen Lau, Privacy Commissioner for Personal Data, Office of the Privacy Commissioner for Personal Data Hong Kong SAR *(invited)*

Charlie Underhill, Better Business Bureau *(confirmed)*

Presentation of Consumer Sentinel and CANSHARE databases by Representatives of US Federal Trade Commission and Industry Canada *(invited)*

12.00 – 1.00 **Session 3: Dispute Resolution at the Earliest Stage – internal complaints handling and customer refunds**

In the offline world, business internal complaints handling systems assist in effectively preventing and resolving disputes between business and consumers. It is anticipated that online business internal complaint handling systems will be as effective in the online environment. Similarly, chargeback regimes and customer refund policies implemented by the payment card industry provide significant benefits to consumers; some of these protections are required by law and some are provided voluntarily as a result of marketplace considerations. This session will explore the types of complaints and disputes that are resolved by either internal complaints handling, chargeback systems, and customer refunds and the scope of application of these mechanisms in the online environment.

Questions: What are the benefits of internal complaints handling? Where are possible problems? What are the incentives to encourage business to handle complaints internally? What systems are available online? Do best practices appear to be evolving within specific business models and/or sectors? Are there any available figures on the numbers and types of resolutions? How does online complaint handling differ from complaint handling by telephone, in writing, or in person? How widely available are chargeback protections? Does the fact that a transaction occurred online affect the availability of chargebacks? Are chargebacks effective? Are statistics available on the success of chargeback protections? Are consumers aware of the availability of chargeback protections? What is the relationship between chargeback protection and online ADR? Can chargeback protections be used to supplement online ADR?
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Moderator: C.H.M. Last, President, Foundation for Dispute Settlement, The Netherlands *(invited)*

- Presenters: Representative of Ikea (*invited*)
- Alastair Tempest, Federation of European Direct Marketing Associations (*confirmed*)
- Helen Bridges, American Express (*confirmed*)
- Panellists: Chief Data Protection Officer, Deutsche Telekom AG, (*invited*)
- Michel Van Huffel, European Commission (*confirmed*)
- Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America (*invited*)
- Eric Mickwitz, Finnish Consumer Ombudsman (*confirmed*)
- Representative of Visa (*invited*)

13.00 – 14.30 Lunch

14.30 – 18.00 Session 4: Online alternative dispute resolution mechanisms

This session will explore existing online ADR mechanisms and those under development that serve to represent the variety of approaches to solving disputes arising online. In an effort to focus the discussion on the differences and similarities of these various mechanisms, the session has been divided into three parts. Each part has different presenters; one moderator and 1 panel of experts will discuss all three parts. The first discussion is devoted to fully automated mechanisms where outcomes are generated without human intervention. The second and third discussions will examine mechanisms, on a sliding scale, from the most flexible to the most formal with regard to procedure and intervention of a neutral.

Questions to be considered in this section will be based on the list of possible legal, technical and procedural characteristics annexed to the Orientation Document. Additional questions will be presented to explore the experiences of users and consumers engaged in ADR mechanisms, including are there different types of disputes that are not conducive to resolution through online ADR?
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- Moderator: Bernard Clements, Joint Research Center (*confirmed*)
- Panellists: Odile Nicholas-Etienne, Union Federale des Consommateurs (*to be invited*)
- Dana Haviland, Wilson Sonsini (*confirmed*)
- Frank Torres, Consumers Union (*invited*)
- John Borking, Deputy Privacy Commissioner for The Netherlands (*confirmed*)
- Charlie Underhill, BBBOnline (*confirmed*)

Ethan Katsh, Professor, University of Massachusetts/Amherst School of Law
(*confirmed*)

I. Fully automated online resolution mechanisms

(*e.g.* outcome generated by computer)

Presenters: Richard Belczynski, ClickNSettle (*invited*)

II. Flexible resolution mechanisms

(*e.g.* conciliation/mediation)

Presentations: Michelle Childs (UK), Which? Web Trader (*confirmed*)
Steven Abernethy, SquareTrade (*confirmed*)

16.00 – 16.30 Coffee

III. Formal resolution mechanisms

(*e.g.* arbitration)

Presentations: Francis Gurry, WIPO Mediation and Arbitration Center (*invited*)
Karim Benyekhlef, e-Resolution (*confirmed*)

IV. ADR mechanisms under development

Presentations: Duncan McDonald, American Institute for Contemporary German Studies
(AICGS) (*confirmed*)

Vincent Tilman, Centre de Recherches Informatique et Droit (*confirmed*)

Morgan Baker, International Chamber of Commerce (*confirmed*)

18.00 Day 1 concludes with remarks from Day One Chair

18.30 Cocktails

DAY 2: REACHING EFFECTIVE ONLINE ADR AT A GLOBAL LEVEL

09.00 – 09.05 Introductory Remarks by Day 2 Chair,
Jytte Ølgaard, Chair, OECD Committee on Consumer Policy (confirmed)

9.05 – 12.30 Session 5: Challenges to online dispute resolution

This session will discuss the variety of possible challenges to the effective use and implementation of online ADR. The session has been divided into three parts and will include exploration of the socio-economic (including linguistic and cultural), technological (including security) and legal challenges.

I. Socio-economic issues related to online ADR

Questions: What are the socio-economic challenges to effective ADR? How do linguistic and cultural
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differences affect the use and implementation of ADR? How do economic differences affect the use and implementation of ADR? How do differences in information and expertise affect the use and implementation of ADR?

- Moderator: Anna Fielder, Director, Consumers International (*confirmed*)
- Presenters: Nora Femenia, Professor, and President, Inter-Mediacion, Inc. (*confirmed*)
Academic
- Panellists: Giles Buckenham, European Commission (*confirmed*)
Scott Cooper, Hewlett-Packard (*confirmed*)
Toh See Kiat (*confirmed*)
Oliver Gray, European Advertising Standards Alliance (*confirmed*)
William Marsh, CEDR (*confirmed*)

II. Legal issues related to online ADR

Questions: How can judgement recognition be established and ADR outcomes be enforced? How might national or international laws and related public policy issues affect the use or implementation of ADR? (*e.g.* non-waivable rights, differences in substantive law, or procedural rules related to ADR). How do the legal rules affect the availability of out-of-court dispute resolution?

- Moderator: Mozelle Thompson, US Federal Trade Commission (*invited*)
- Presentations: Chris Kuner, Attorney, Morrison & Foerster, LLC (*confirmed*)
Philippe Fouchard, Professor, Universite de Paris II (*confirmed*)
- Panellists: Marie Bourgeois, French Ministry of Justice (*to be invited*)
Marco Gasparinetti, Data Protection Commissioners' Office, Italy (*confirmed*)
Ron Plessner, Electronic Commerce and Consumer Protection Group (*confirmed*)
Pippa Lawson, PIAC (*confirmed*)
Eric Ducoulombier, European Commission (*confirmed*)
Michael Geist, Professor, University of Ottawa Law School (*invited*)
- 11.00 - 11.30 Coffee/Tea

III. Last Resort Principle and *Juge d'appui* ("support judge")

It is expected that business internal complaint handling systems and online ADR mechanisms will succeed in resolving most disputes in relation to B2C online interactions. However, in cases where difficulties arise in the course of ADR or when the alternative mechanisms fail, the assistance of a juge d'appui would be helpful and recourse to court might be necessary.

This session focuses on the intersection of the jurisdictional framework with online ADR. The session will focus on the use and effectiveness, in less formal ADRs, of a juge d'appui, which is common in arbitration procedures. The session will also include an exploration of the applicability of traditional notions of jurisdiction (competent forum), related enforcement issues, and a review of existing solutions and proposals for new solutions.

Questions: How do the legal rules affect the incentives for businesses to provide and/or participate in online ADR? How do the legal rules affect the incentives for consumers to participate in online ADR? Would the assistance of <i>juge d'appui</i> be helpful in the online context?
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Moderator: Catherine Kessedjian, Professor, University of Paris II, and former Deputy Secretary General, Hague Conference on Private International Law (*confirmed*)

Panellists: David Goddard (NZ) (*confirmed*)

Mark Pearl, Shaw Pittman (*invited*)

Kathryn Sabo (Canada) (*invited*)

Ann Marie Rouchard, European Commission (*confirmed*)

Asunción Caparrós, ABN Amro Bank (*confirmed*)

Pippa Lawson, PIAC (*confirmed*)

12.30 – 14.00 Lunch

14.00 – 14.45 Session 5 (continued): Challenges to online dispute resolution

IV. Technological issues related to online ADR

Questions: What are the technological challenges to online ADR? How will technological innovation assist to remedy these challenges? How can technological interoperability be ensured?

Moderators: Felix Cohen, Consumentenbond (*confirmed*)

Presenter: Joseph Alhadeff, Oracle (*confirmed*)

Chris Lynn, Microsoft (*confirmed*)

Panellists: Austrian Ombudsman (*invited*)

Government (Germany)

Sarah Andrews, EPIC/Privacy International (*invited*)

Peter Lubkert, Information Technology Networks, OECD (*invited*)

Representative of Nova Forum (*invited*)

Questions, answers and comments from the audience will follow the panel discussion.

14.45 – 17.45 Session 6: The roles of stakeholders

This session will discuss who can foster and develop effective ADR for the online environment, and how. The session will focus on three different areas: 1) defining essential elements (through regulation or codes of conduct), 2) ensuring compliance and enforcement (public or private sector trustmark programmes and law enforcement), and 3) providing effective education about ADR.

The discussion will highlight the need for complementary approaches among the stakeholders, and for a balance between the interests of individuals and consumers, and business.

Questions: What are the roles of stakeholders in identifying essential elements for online ADR? What are the roles of stakeholders in developing trustmark programmes and codes of conduct, common complaint systems and ensuring enforcement? What are the roles of stakeholders in educating business, consumers and government about online ADR? What can stakeholders do to ensure overall participation in ADR?

Panellists: Yuko Yasunaga, Deputy Director, Commerce Policy Division, MITI Japan (*confirmed*)

 David Mair, European Commission (*confirmed*)

 Rebecca Richards, Director of Policy and Compliance, TRUSTe (*confirmed*)

 Malcolm Crompton, Data Protection Commissioner (*invited*)

 Roger Cochetti, Network Solutions (*confirmed*)

 Susan Grant, National Consumer League (*confirmed*)

I. identifying essential elements

II. ensuring compliance (e.g. trustmark programmes)

III. educating business, consumers and government about online ADR

Moderator:

Presenters: Naoshi Shima, NEC (*confirmed*)

 Louise Sylvan, Consumers International

 Martin Bond, Department of Trade and Industry, United Kingdom (*confirmed*)

 Government Representative (US)

 Duncan McDonald (*confirmed*)

Francis Aldhouse, Deputy Data Protection Commissioner, United Kingdom
(*confirmed*)

16.45– 17.15 **Coffee**

17.45 – 18.00 **Conference concludes**

The conference will conclude with a brief summary of the conference discussions, with the secretariat of each of the co-organisers (OECD, HCOFIL, and ICC) outlining possible directions for further exploration in the area of online ADR, based on the conference discussion.

Speakers: OECD Representative
 HCOFIL Representative
 ICC Representative