

**ERIA Research Project Report Fiscal Year 2009, No. 6**

**ESTABLISHMENT OF A SECURE  
AND SAFE E-COMMERCE  
MARKETPLACE**

Edited by

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## **EXECUTIVE SUMMARY**

### **Establishment of a Secure and Safe e-Commerce Marketplace**

#### **Background and Objectives**

The expansion of cross-border trade is one of the key aspects to ensure sustainable economic growth in ASEAN and East Asia. With the region's continuous increase in Internet use, companies, in particular small-and-medium-sized businesses, are keen to take advantage of the opportunity provided by the Internet to start cross-border e-commerce because they can directly sell goods and services beyond borders without hefty investments.

There are two major challenges to encourage parties to engage in cross-border e-commerce; one is the differences of the legal systems in each country, and the other is the disparities of availability across the region in terms of the means of redress for cross-border disputes. As for the latter issue, transaction values in Business to Consumer (B2C) e-commerce are generally small, so there is a growing need for an effective redress for consumers without resorting to litigation.

Since 2008, this working group has focused on studying the establishment of a secure and safe e-commerce environment in ASEAN and the East Asian region, and has held four meetings in total to exchange views among member nations. In 2008, the participants of this working group (1) researched the current status of e-commerce and e-commerce-related laws in each country, and (2) studied the European Consumer Centre Network (ECC-Net)<sup>1</sup> as a pioneering work of a cross-border e-commerce complaint handling network. In 2009, the members (3) attempted to deepen their understanding of the legal systems regarding e-commerce in each member nation, and (4) analyzed actual cross-border complaints to examine the creation of a dispute resolution system for e-commerce. Furthermore, the Social Networking Service (SNS) system was established to share information among the members in an effective manner.

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<sup>1</sup> [http://ec.europa.eu/consumers/redress\\_cons/index\\_en.htm](http://ec.europa.eu/consumers/redress_cons/index_en.htm).

## **Research Findings and Conclusion**

E-commerce in each ASEAN and East Asian country is on an upward trend across the region, but the spread of e-commerce differs country by country. The same is true of the development of legal systems regarding e-commerce. For example, some countries stipulate a cooling-off system as compulsory provision, and other countries do not. In such circumstances, there is a need for promoting legal harmonization among ASEAN and East Asian nations to help active cross-border e-commerce transactions. However, the realization of legal harmonization is not feasible in the short term because of the differences in social, economic and political situations within the region. To increase legal transparency in the e-commerce market, it is necessary that the information on the commonalities and differences between legal systems of each country should be available to both e-commerce businesses and consumers before they engage in online transactions.

Many complaints, especially in B2C e-commerce, have resulted from differences of language, laws, regulations, business practices and a lack of communication. The working group obtained the common understanding that most of those complaints can be solved by offering advice and information to consumers. To solve cross-border B2C complaints effectively, complaint handling organizations which have deep knowledge of the legal systems in each country should form a network with each other.

In order to realize the creation of such a network, namely, an International Consumer Advisory Network (ICA-Net), a Consumer Advisory Liaison Office (CALO) should be established in each nation. There are some candidate organizations for CALO in each country. It is desirable that the cost of consultation with consumers is basically free, so those organizations should have a stable financial foundation while operating at a low cost to handle cross-border complaints actively.

The functions of the ICA-Net are 1) to receive cross-border complaints from domestic consumers, 2) to offer them relevant information or advice, 3) to inform the other CALO in a different country where a business in dispute is located regarding the complaint, and 4) to urge the business to solve the dispute through the other CALO. To enable the ICA-Net to function effectively, there is a need for a set of rules which the CALO should comply with. For example, there should be a rule to govern handling of personal information.

After a two-year research project, the effectiveness of the ICA-Net as a venue for handling individual complaints was proven. The project also demonstrated the usefulness of the ICA-Net as a platform for information sharing such as information on the legal systems of each country and best practices for solving disputes among the CALOs. The establishment of the SNS was also beneficial because the CALO can easily share such information through the system.

By continuing and maintaining the ICA-Net among the participating countries with the focus on complaint handling, each government is able to obtain a better understanding of the legal systems and learn from the best practices of other countries toward making effective policy as well as increasing consumer protection in the context of cross-border e-commerce. The ICA-Net could provide the impetus for the harmonization of legal systems on e-commerce, and thereby contribute to the economic integration in ASEAN and East Asia.

### **Policy Recommendations**

- Continuous review and exchange of information regarding legal systems related to e-commerce in ASEAN and East Asia are needed toward future legal harmonization.
- Building and supporting the ICA-Net for the sustainable and effective operation of the network toward the resolution of problems and disputes in cross-border e-commerce. The following are the commitments expected of each government:
  - Select a reliable CALO in each country. It is advisable that the government nominates and selects an adequate organization which intends to and is able to comply with a code of conduct proposed by this working group.
  - Provide minimal financial assistance. It is necessary that the CALO is financially stable to be able to handle complaints and provide information without any costs borne by the consumers.
  - Forge the cooperation of the CALO with domestic law enforcement authorities.
  - Promote the ICA-Net in own country to collect and aggregate complaints or problematic cases in cross border e-commerce into the ICA-Net.

Accumulating the number of cross-border cases handled will make it possible to figure out further issues to be investigated toward legal harmonization.

- Support the cooperation between the ICA-Net and other international for within the region and the broadening of the number of participating countries within the region.
- Support the coalition and cooperation between the ICA-Net and other international networks outside the region, such as the ECC-Net.

## **I. Background and Objectives**

ASEAN and East Asia is one of the most dynamic and rapidly growing regions in the world. In the wake of the economic meltdown in 2008, the region appears to be showing economic resilience. The expansion of cross border trade is one of the important elements to ensure sustainable growth of the economy in the region.

With the region's continuing improvement of the Internet infrastructure under the leadership of each government, the number of Internet users has been steadily increasing. Along with the development of the e-commerce market in the region, e-commerce businesses can sell goods and services directly to consumers across borders without making hefty investment. Small-and-medium sized businesses in particular have a keen interest in entering Business to Consumer (B2C) e-commerce to seize this moment. Also, consumers in many ASEAN and East Asian nations are willing to reap the benefits from such development of e-commerce. If there is an environment where consumers can purchase attractive products at home or abroad in an easy fashion, strong consumer demand and further economic growth in the entire region can be expected. ASEAN and East Asian countries should not miss this opportunity, but rather turn the advantages of e-commerce into economic development of the entire region. To stimulate a cross-border e-commerce market in consideration of the future economic integration of this region, there are two challenges; one is to share information and the second is to build a safe and trustworthy e-commerce environment within the region.

In order to address these challenges, the first objective of the working group is to strengthen mutual understanding through examining consumer protection laws relating to e-commerce, creating a visualized legal comparison chart as well as understanding the e-commerce market situation in the respective member countries. The reason for the objective is that the scope or the contents of the laws and regulations of each country differ significantly depending on the regulation policy although the improvement of the legal systems concerning e-commerce has been underway in many member countries.

The second objective is to establish a reliable e-commerce market in this region. The 2008 research results revealed each member state has made efforts such as establishing the complaint handling system and the trustmark program to build

confidence in the domestic e-commerce market as a part of infrastructure improvement, but the policies regarding international e-commerce transactions have not been sufficiently implemented. In terms of e-commerce complaint handling, the European Union has already developed a complaint handling network with its aim of “A single market,” and the network is functioning very well in Europe. In some regions, there is a bilateral cooperation between complaint handling organizations. However, a comprehensive network for cross-border e-commerce dispute resolution has not yet been well-established in ASEAN and East Asia.

Most complaints are due to misunderstanding stemming from the differences of languages, laws, regulations and business practices. Of course, arbitration and litigation are possible measures for solving e-commerce disputes as a last resort; however, they are unrealistic considering the relatively small value of e-commerce transactions. In addition, determining applicable laws is difficult in the case of cross-border e-commerce problems.

To build a reliable e-commerce market and to further expand the e-commerce market in the entire ASEAN and East Asia region, the working group shares an understanding of the necessity of establishing an effective international complaints handling framework to protect consumers as a first step. With this in mind, the working group proposes the introduction of the International Consumer Advisory Network (ICA-Net) in the region whereby complaint handling organizations work together to resolve cross-border e-commerce disputes and share information. Through handling individual real cases as a pilot project, the working group attempted to highlight the significance, effectiveness and challenges of ICA-Net.



## **II. Overview of the Research**

In order to examine the research further, the members of this working group embarked on developing a comparison list of the legal systems of each country and studied the necessity of the establishment of the International Consumer Advisory Network (ICA-Net) in ASEAN and the East Asian region this year.

### **1. Outline**

#### **1.1. The First Workshop**

The first workshop was held on November 26-27, 2009 at NEC Cooperation in Tokyo. All members except for one attended the workshop.

In session one, “Review of achievement in 2008,” Mr. Anada reported the e-commerce related laws and regulations of each member country based on the research findings of last year. The list of e-commerce related laws and regulations of each country was also handed out to all the attendees. Next, in “Current status of e-commerce and legal and other systems in Asia,” ERIA members were briefly updated on issues such as the state of their e-commerce market and progress with infrastructure building. New members from the Philippines and South Korea reported the state of e-commerce, legal systems and complaint handling systems. In session two “Cross-border problems and significance of ICA-Net,” the EC Network of Japan reported the summary, significance and challenges of eight cases handled by Consumer Advisory Liaison Offices (CALOs) of ICA-Net and the trends of cross-border complaints that Japanese consumers encountered. Followed by the reports of cross-border disputes, the results of research in Europe were introduced as pioneering efforts from Mr. Hayakawa. At the end of session two, the members continued to discuss operational rules of ICA-Net and how to handle personal/business information properly when handling complaints.

On Day 2, the members further exchanged their views regarding the type of framework that should be created for ICA-Net and the code of conduct for CALO in session three.

The following is the program of the first workshop.

<Agenda of the first workshop>

(Day 1: Thursday, 26 November)

- 9:30 - 9:50 Welcome and introduction  
Greeting from Prof. Shujiro Urata, ERIA  
Greeting from Mr. Kenjiro Suzuki, METI, Japan  
Greeting from Prof. Tsuneo Matsumoto, the leader of working group (WG), Introduction of members
- 9:50 - 12:30 Session 1: Current status of e-commerce and legal & other systems in Asia
- 9:50 - 10:20 Review of achievement in 2008  
by Mr. Ko Anada, Japanese member of WG
- 10:20 - 10:50 Trend of e-commerce market and legal systems in Korea  
by Prof. Moonchul Chang, Korean member of WG
- 10:50 - 11:20 Trend of e-commerce market and legal systems in the Philippines  
by Ms. Maria Lourdes A. Yaptinchay, Filipino member of WG
- 11:20 - 11:30 Coffee break
- 11:30 - 11:40 Update of e-commerce market and legal systems in Japan  
by Mr. Michikazu Chihara, consultant of WG
- 11:40 - 11:50 Update of e-commerce market and legal systems in Malaysia  
by Muhammad Sha'ani b. Abdullah, Malaysian member of WG
- 11:50 - 12:00 Update of e-commerce market and legal systems in Vietnam  
by Dr. Nguyen Manh Quyen, Vietnamese member of WG
- 12:00 - 13:30 Luncheon
- 13:30 - 14:00 Update of Consumer International's efforts  
by Ms. Indrani Thuraisingha, member of WG
- 14:00 - 17:10 Session 2: Cross-border problems and significance of ICA-Net
- 14:00 - 14:50 Review of ICA-Net and case report  
by Ms. Yuko Tonomura, EC Network, the researcher of WG
- 14:50 - 15:30 Report of cross-border problems  
by each member of WG or observer
- 15:30 - 15:50 Coffee break
- 15:50 - 16:10 Report of discussion with GBDe and Europe

by Prof. Yoshihisa Hayakawa, Japanese member of WG

- 16:10 - 17:10 Free discussion
- Operation rules of ICA-Net
  - Management of personal information
  - Ways to utilize ICA-Net
  - Information sharing and case report among members

(Day 2: Friday, 27 November)

- 9:30 - 11:50 Session 3: Toward realization of ICA-Net
- Review of Session 2
- Free discussion
- Difficulty in establishing a framework in each country
  - Role of the government
  - Cooperation with non-Asian countries
  - Action plan
  - Draft of policy recommendation
- 11:50 - 13:00 Luncheon

## **1.2. The Second Workshop**

The second workshop was held on January 20-21 at the ERIA Seminar room in Jakarta, Indonesia. All members except for two attended the workshop. Prof. Hayakawa, a vice chair of the working group, chaired the workshop. In the morning session, “Comparison of e-commerce law system in each country,” Mr. Anada, a Japanese member, gave an update on the list made at the first workshop. Also each member presented their response to the questionnaire which was assigned prior to the meeting. Next, a member representing Consumers International (CI) expressed its expectations for ICA-Net. In the afternoon session, the members confirmed the significant role of ICA-Net and discussed the details of the agreements and the code of conduct for CALO including appropriate ways of handling personal information and disclosing trade secrets in reference to the documents provided by the European Commission (EC). This discussion extended to the next day. Under great leadership of the vice leader, the members actively discussed the feasibility of a fully-fledged

operation of ICA-Net and appropriate agreement for CALO.

The following is the program of the second workshop.

<Agenda of the second workshop>

(Day 1: Wednesday, January 21)

- 9:30 - 12:30 Morning session
- 9:30 - 10:50 Welcome and introduction (review of the 1st workshop)  
Moderated by Prof. Yoshihisa Hayakawa,  
a vice leader of the working group  
Comparison of e-commerce law system in each country
- General overview of each country's response to the questionnaire by Mr. Anada
  - Supplemental explanation from each country
  - Prof, Moonchul Chang, National Police University, Korea, (member)
  - Ms. Maria Lourdes A. Yaptinchay, E-commerce Office, Department of Trade and Industry, the Philippines (member)
  - Mr. Naoki Iguchi, Anderson Mori & Tomotsune, Japan (member)
- 10:50 - 11:10 Coffee break
- 11:10 - 12:30 Comparison of e-commerce law system in each country
- Supplemental explanation from each country
  - Mr. Muhammad Sha'ani b. Abdullah, NCCC, Malaysia (member)
  - Dr. Nguyen Manh Quyen, Ministry of Industry and Trade, Vietnam (member)
  - Finalization of contents of the research report and writing assignment
- 12:30 - 14:00 Luncheon
- 14:00 - 17:00 Afternoon session
- 14:00 - 15:20 ICA-Net
- Basic structure of ICA-Net by EC Network
  - Progress report of ICA-Net by EC Network
  - Consumer organization's expectations on ICA-Net

- by Ms. Indrani Thuraisingham, Consumers International (CI),  
Malaysia (member)
- Draft of recommendation
- 15:20 - 15:40 Coffee break
- 15:40 - 16:50 ICA-Net
  - Documents of ECC-Net
  - Draft outline of the research report
  - Current situation in each country and possibility of realization
- 16:50 - 17:00 Closing remarks by Prof. Yoshihisa Hayakawa,  
a vice leader of the working group

(Day2: Friday, January 22)

- 9:30 - 9:40 Opening remarks Moderated by Prof. Yoshihisa Hayakawa,  
a vice leader of the working group
- 10:30 - 10:50 Coffee break
- 10:50 - 12:00 Continuation of the session
- 12:00 - 13:00 Luncheon

## **2. Members**

The selected experts who have known recent e-commerce developments, e-commerce related legal systems and consumer protection since the rise of the Information and Communication Technology in ASEAN and East Asian countries participated in the working group.

### **(1) Leader**

The leader of this working group is Prof. Tsuneo Matsumoto of Hitotsubashi University Graduate School of Law in Japan.

His fields of specialization include the Civil Code, consumer law, and e-commerce. He has recently conducted research especially on consumer affairs, IT-related law, and corporate social responsibility.

He plays central roles in Japanese government committees in the field of consumer protection. In addition, he is familiar with the state of development and legal systems in Asian countries, since he has engaged in support activities for the establishment of legal systems in developing countries as a Japan International Cooperation Agency (JICA) expert. Prof. Matsumoto was also appointed as a chairperson of the Consumer Commission, a monitoring committee of the Consumer Affairs Agency of Japan in September, 2009.

## (2) Members

The members of this working group are people in charge of consumer protection and e-commerce policy or specialists in international law in Japan, Malaysia, Singapore, the Philippines, South Korea and Vietnam.

### <Japan>

- Prof. Yoshihisa Hayakawa, belonging to Rikkyo University in Japan
- Mr. Naoki Iguchi, a lawyer, belonging to Anderson, Mori, Tomotsune Law Office in Japan
- Mr. Ko Anada, a lawyer belonging to the Attorneys' corporation, Soga, Uriu and Itoga Law Office in Japan

### <Malaysia>

- Ms. Indrani Thuraisingham, Head of Consumers International (CI) Kuala Lumpur Office in Malaysia
- Mr. Muhammad Sha'ani Abdullah, Chief Executive of the National Consumer Complaints Center (NCCC) in Malaysia

### <The Philippines>

- Ms. Maria Lourdes A. Yaptinchay, Supervising Director of the E-Commerce Office, Department of Trade and Industry in the Philippines

### <Singapore>

- Mr. Seah Seng Choon, Executive Director of the Consumer Association of Singapore (CASE) in Singapore

### <South Korea>

- Prof. Moonchul Chang, belonging to National Police University in South Korea

<Vietnam>

- Dr. Nguyen Manh Quyen, Deputy Director General of Vietnam E-Commerce & Information Technology Agency (VECTA), Ministry of Industry and Trade (MOIT) in Vietnam

(3) Institute supporting the study

The EC Network supported this working group's research by gathering information to inform the members' discussion at the workshops. The following are EC Network's research members:

- Ms. Toshiko Sawada (Director)
- Mr. Eiichiro Mandai (Senior Researcher)
- Ms. Yuko Tonomura

The EC Network is one of Japan's leading institutes in the complaint handling fields, specifically complaints related to cross-border e-commerce.

The EC Network handles consumer complaints and disputes from both domestic and international consumers arising from online transactions such as internet shopping, internet services and internet auctions. With the constant growth of cross-border e-commerce, the EC Network has also earnestly engaged in international activities including participation of the Asia Pacific Trustmark Alliance (ATA) whose members issue their trustmarks to e-commerce businesses. In the ATA, the EC Network plays a central role as the representative of an alternative dispute resolution (ADR) institute of Japan.

(4) Consultant

As an ERIA Consultant, this working group invited Mr. Michikazu Chihara, Manager of NEC Cooperation (Japan) to the workshops. Mr. Chihara is a leader of the Consumer Confidence Issue Group of the Global Business Dialogue on Electronic Society (GBDe) and has actively engaged in promoting consumer confidence in e-commerce. He made a contribution to the discussion at the workshops as a strong advocator of the realization of ICA-Net.

(5) Observers

The following people who were interested in this research attended the workshops and contributed to the discussion:

- Ms. Shino Uenuma, Attorney of South Toranomom Law Office in Japan
- Prof. Shujiro Urata, Project Supervisor of ERIA and Professor, Waseda University in Japan
- Dr. Friska Parulian, Associate Researcher of ERIA

(6) Coordinating institute

The Center of the International Cooperation for Computerization (CICC) wholly managed this project. The core members are shown below:

- Mr. Tomoyoshi Nishizumi
- Ms. Hiroko Kawabata
- Ms. Tomoko Kawamura

CICC has been involved in support programs for training human resources essential for the computerization of developing countries, promotion of cooperation projects to find solutions for technical challenges common among developing countries, and exchanges of individuals to support computerization. Their management skills developed through these experiences were utilized during this project.

### **3. Contents of the Report**

This is the final report of this working group. Part III, which is entitled “Research for the Establishment of a Safe and Highly Reliable Marketplace in ASEAN and East Asia”, which is the result of the research work undertaken by the members of the group. The contents are as follows:

#### **3.1. Current Status of E-commerce Market and Legal Systems in Each Country**

From 1.1. to 1.6., each member reports on the present condition of his own country based on presentations and discussions in the two workshops.

Regarding 1.1. Malaysia, 1.3. Vietnam and 1.6. Japan, they are the contents of



re-arrangement of these data and update, and the new analysis of the legal systems. With respect to these three countries, fundamental information has already been published in the ERIA Research Project Report 2008<sup>2</sup>.

Sections 1.4. and 1.5. present in detail information about South Korea and the Philippines, respectively. The sections also include fundamental information since these two countries started their participation in the working group only in 2009.

1.2. Singapore updated this report though they were not present in the two workshops. Thailand participated in the working group as a member in 2008, but did not participate in 2009. Likewise, China which attended the workshop in 2008 as an observer did not join the workshops in 2009. However, the report of 2008 contains a lot of information on Thailand and China.

This year, the working group examined the legal system on consumer protection of each country as it relates to e-commerce. The members responded to a specific set of questions and the result of the comparative study is presented in Section 1.7. The study interestingly highlights the differences in the legal systems even just within Asia. This comparative chart on the legal systems will serve as a good reference not only for e-commerce businesses but also for policymakers in each country, hence, it can pave the way for high-level harmonization of legal systems within ASEAN and East Asia.

The legal information such as the name of a law on non-member countries is included in the comparative chart. It should be noted that the working group could not confirm the contents and the accuracy of such information without a member from those countries in the group.

The comparative study should not end with the conclusion of this project. It is desirable to continue updating the comparative chart and expand the scope of the study to other countries, to share not only the text of the laws but also the actual application of the laws. Countries can benefit from this information exchange.

### **3.2. Demonstration Experiment of ICA-Net**

This chapter is a summary of discussions in the workshops about the demonstration experiment and the future image of ICA-Net.

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<sup>2</sup> [http://eria.org/pdf/research/y2008/no3-2/III.Research\\_for\\_Establishment.pdf](http://eria.org/pdf/research/y2008/no3-2/III.Research_for_Establishment.pdf).

In 2.1., from the standpoint of a consumer organization, the Consumers International (CI) states expectations for ODR (Online Dispute Resolution) as redress for consumers who have a dispute arising from cross-border e-commerce. CI also expects that the ICA-Net will help bridge the regional digital divide and will fulfill various functions in the future.

Prof. Hayakawa, Vice Chair of the working group, visited the EU and ECC UK and exchanged opinions about the possibility of future cooperation of ICA-Net with ECC-Net of EU. He was able to acquire further information of the ECC-Net and EU as good reference to consider the design of ICA-Net. The result is described in 2.2.

In 2.3. “Outline of demonstration experiment and case example,” the report clarifies the significance of the ICA-Net based on the discussion of the workshops with explanation of details about eight cases dealt with in the demonstration experiment.

Based on these results, the participants of the final workshop discussed the desirable framework of the ICA-Net, which will include a “Terms of Reference” as the minimum code of conduct for each CALO. The required support from each government, as viewed by the working group, is described in 2.4.

### **3.3. Toward Realization of ICA-Net**

The set of policy recommendations is the outcome of the research conducted these past two years.

#### 4. List of Authors

Executive Summary	
I. Background and Objectives	Prof. Tsuneo Matsumoto
II. Overview of the Research	Prof. Tsuneo Matsumoto
III. Research for Establishment of a Safe and Highly Reliable Marketplace in ASEAN and East Asia	
1. Current Status of E-commerce Market and Legal Systems in Each Country	
1.1. Malaysia	Mr. Muhammad Sha'ani Bin Abdullah
1.2. Singapore	Mr. Seah Seng Choon
1.3. Vietnam	Dr. Nguyen Manh Quyen
1.4. Republic of Korea	Prof. Moonchul Chang
1.5. Philippines	Ms. Maria Lourdes Yaptinchay
1.6. Japan	Mr. Naoki Iguchi
1.7. Comparison of Consumer Protection Laws	Mr. Ko Anada
2. Demonstration Experiment of ICA-Net	
2.1. Consumer Organization's Expectations regarding Online Consumer Redress	Ms. Indrani Thuraisingham
2.2. Exchange of Opinions with EU	Prof. Yoshihisa Hayakawa
2.3. Outline of Demonstration Experiment and Case Example	EC Network
2.4. Terms of Reference of ICA-Net	EC Network
3. Policy Recommendation: Toward a Realization of the ICA-Net	Prof. Tsuneo Matsumoto

### **III. Research for Establishment of Safe and Highly Reliable Marketplace in ASEAN and East Asia**

#### **1. Current Status of E-commerce Market and Legal Systems in Each Country**

##### **1.1. Malaysia**

###### *1.1.1. E-commerce Market*

The Ninth Malaysia Plan (2006-2010) (9MP) mid-term review reports that the sale of goods and services over the Internet or e-commerce grew significantly at an average annual rate of 81.8 percent from RM8.8 billion in 2005 to RM20.9 billion in 2007. This was mainly attributed to the rise in electronic transactions in the business to business (B2B) market in tandem with the increased acceptance of Internet commerce.

Malaysia's information technology (IT) industry is expected to grow 6.5 percent in 2010, rebounding from a 1.3 percent decline in 2009, according to technology research firm IDC.

In its annual "Top 10 Predictions of the Malaysian Information and Communications Technology Industry (ICT)", it stated that IT spending is likely to cross the US\$6 billion mark in 2010, with hardware spending expected to return to a positive note.

The Malaysian telecommunications industry is also expected to rebound strongly this year, with a growth of 4.4 percent over 2009 while reaching a total of US\$6.7 billion for the year, according to IDC ASEAN telecommunications research manager Lincoln Lee.

He stated that for 2010, IDC is predicting that the total smartphone shipments will hit 1.8 million units, growing by 19.8 percent.

Lee also added that IDC expects the historical trend of declining average selling prices to further support the growth in smartphone adoption.

"IDC also forecasts smartphone shipments in Malaysia to represent 30.1 percent of the total mobile phone shipments sold in Malaysia this year", he said and that mobile broadband services in Malaysia will continue to pick up this year.

"High-Speed Packet Access (HSPA) broadband subscribers are anticipated to reach 1.5 million users, a 71.5 percent growth rate from 2009, while WiMaX subscribers will

hit 137,000 users”.

“IDC sees security-as-a-service creating traction into more niche areas such as security and vulnerability management”, he said. Malaysia's information technology (IT) industry is expected to grow 6.5 percent this year, rebounding from a 1.3 percent decline last year, according to technology research firm IDC.

IT spending is likely to cross the US\$6 billion mark this year, with hardware spending expected to return to a positive note, as stated in its annual “Top 10 Predictions of the Malaysian Information and Communications Technology Industry (ICT)”.

IDC ASEAN software research manager Roger Ling stated that in terms of market movements, IDC foresees the impact of the global economic crisis in 2009 to drive new synergies and dynamics in the local market, bringing fundamental transformation and growth to the industry in 2010.

According to Ling, 2009 saw an unprecedented year-on-year decline for the applications market that traditionally sees not only a strong year-on-year growth, but also contributes to a large chunk of the packaged software market.

“As for this year, there will be a fundamental transformation for business software in which demand for applications will improve, driven by new offerings that relate to the changing business landscape”, he said.

According to IDC ASEAN telecommunications research manager Lincoln Lee, the Malaysian telecommunications industry is also expected to rebound strongly this year, with a growth of 4.4 percent over 2009 while reaching a total of US\$6.7 billion for the year.

“Growth in telecommunications spending is anticipated to come largely from the wireless market”, he told the media briefing.

Lee said the industry is expected to see a growth in the adoption of smartphones this year.

“For 2010, IDC is predicting that the total smartphone shipments will hit 1.8 million units, growing by 19.8 percent”, he added.

He also said that IDC expects the historical trend of declining average selling prices to further support the growth in smartphone adoption and that IDC also forecasts smartphone shipments in Malaysia to represent 30.1 percent of the total mobile phone

shipments sold in Malaysia this year.

Lee added that mobile broadband services in Malaysia will continue to pick up this year and that

High-Speed Packet Access (HSPA) broadband subscribers are anticipated to reach 1.5 million users, a 71.5 percent growth rate from 2009, while WiMaX subscribers will hit 137,000 users.

The telecommunications service providers will roar in the “Year of the Tiger”, according to Lee.

“The possibility of competitive forces is likely to lead to mergers and acquisitions in the telecommunications industry”, he said.

Lee also anticipated that the changing landscape post merger and acquisition will impact on partner programmes this year and that growing trends like cloud computing and services will add new dynamics moving forward.

Lincoln Lee stated that security software products are expected to receive a boost in adoption this year and that IDC sees security-as-a-service creating traction into more niche areas such as security and vulnerability management.

According to the Malaysian Productivity Corporation (MPC), the adoption and implementation of e-commerce has not been widely embraced by the Small and Medium Enterprises (SMEs), particularly in enhancing their productivity and competitiveness.

Its Director General, Mohd Razali Hussain, said the main reason for this was a lack of understanding of e-commerce benefits and a refusal to leave the comfort zone.

“It's an issue of mindset. SME entrepreneurs are not aware of the benefits of e-commerce transactions in increasing productivity and they are not well exposed to ICT (information communication technology)”.

“Entrepreneurs continue to pursue without adopting ICT due to the comfort zone in the current methods they have embraced”, he told Bernama after opening the Electronic Solution System 2010 seminar and exhibition here on Tuesday.

A perceived high cost is also another reason SMEs are not engaging in e-commerce activities.

“Generally, they are accepting new changes but at a limited pace as they don't have information and do not know how to implement the system. They think the ICT

system is expensive but that is not true. You do it the right way, it will not be costly.”, he explained.

Razali reiterated that with the nation encouraging the SMEs to penetrate the global market, embracing ICT would be important as the world becomes the market through e-commerce.

“E-commerce provides an opportunity to participate in global production networks that are becoming more prevalent in many industries and the ability to tap resources such as labour, capital and knowledge”, he added.

According to a survey conducted by MPC from June to December 2009 on 296 SME companies, only 17 percent of the respondents had conducted e-commerce transactions during the year.

Razali, however, said he expected the adoption level of e-commerce to increase between 20 and 40 percent this year with more awareness programmes.

He said the manufacturing sector was more actively adopting e-commerce followed by the service industry.

Razali also added with the changing business scenario, SMEs should take advantage of the lower cost and better Internet facilities to engage in e-commerce activities.

He also called on them to enhance their knowledge on e-commerce through capacity development programmes.

“The National Broadband Initiative (NBI) launched on 24<sup>th</sup> March 2010 by the Prime Minister of Malaysia will be a key driver of growth in the new economy and the availability of information communication technology such as broadband will become a major contributor to the economy”, said Dr. Yeah Kim Leng, Group Chief Economist of RAM Holdings Bhd.

The NBI that comprises the rollout of HSBB and broadband to the general population (BBGP) will not only serve to bridge the digital divide and improve the lives of many, but also aid small medium enterprises (SMEs) and enterprises to be more competitive in an increasingly globalized marketplace.

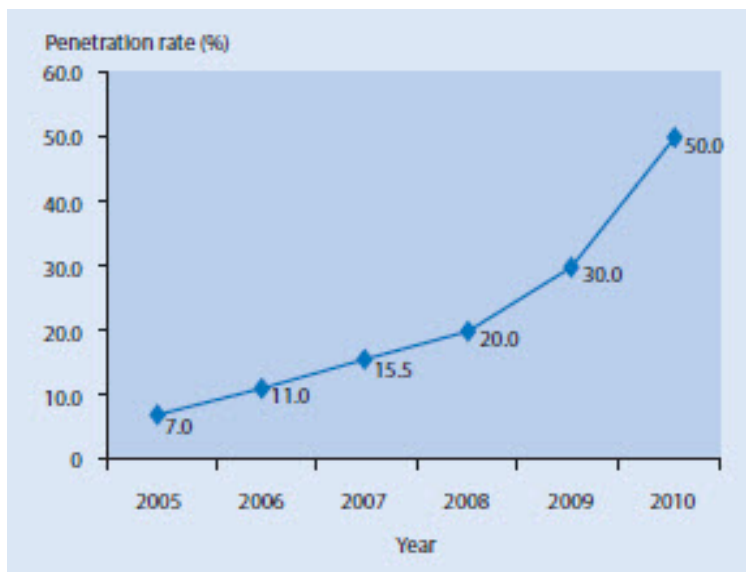
Dr. Leng claimed the introduction of the NBI will open new doors and markets for SMEs who have yet to fully embrace ICT.

The promise of an increase in bandwidth and greater broadband availability will propel cloud computing service providers to deliver a wide range of IT services via the

cloud to SMEs and enterprises nationwide.

Under the NBI, the Malaysian Communications and Multimedia Commission (MCMC), which is under the Ministry of Information, Communications and Culture (MICC), targets a 50 percent or equivalent to 3.2 million homes broadband penetration by end-2010. This will contribute one percent to the Gross Domestic Product (GDP) and create 135,000 new job opportunities this year.

**Figure 1.1. Broadband Penetration Rate (per 100 Households)**



Source: Malaysian ICT 2007 and Malaysian Communications and Multimedia Commission.

Liberalization of various economic sectors has been initiated by the current Prime Minister since 2008 to attract global players including the information and communication technology (ICT).

The ICT sector with NBI infrastructures is expected to provide the catalysts to attract new ICT businesses that can tap into the convergence of telephony, multimedia and e-commerce.

#### *1.1.2. Legal System Related to E-commerce*

Amongst the legislation that has been passed in Malaysia are the Communications and Multimedia Act 1998; Digital Signature Act 1997; Computer Crimes Act 1997;



Telemedicine Act 1997; The Electronic Commerce Act 2006; The Electronic Government Activities Act 2007 and Consumer Protection Act 1999. These legislations have been amended over the years in attempts to better address emerging e-commerce issues. The Personal Data Protection Bill was introduced for the first reading in the parliament in 2009.

- Communications and Multimedia Act 1998

The CMA seeks to provide a generic set of regulatory provisions based on generic definitions of market and service activities and services relating to communications and multimedia industry. The jurisdiction of this Act is restricted to networked services and activities only under MCMC.

- Digital Signature Act 1997 (DSA)

The DSA and Digital Signature Regulations 1998 provide the legal validity, enforceability and admissibility of the processing of transactions especially commercial transactions, electronically through the use of digital signatures.

This Act is an enabling law that allows for the development of, amongst others, e-commerce by providing an avenue for secure on-line transactions through the use of digital signatures. The Act provides a framework for the licensing and regulation of Certification Authorities, and the recognition of digital signatures. This legislation is enforced by MCMC.

The Controller of the Certification Authority who has authority to monitor and license recognized Certification Authorities was appointed on 1st of October 1998.

DigiCert is Malaysia's only licensed certification authority. It offers digital certificates to individuals and organizations that may be used to verify the authentication of a specific website, individual or company on the internet.

- Computer Crimes Act 1997 (CCA)

The CCA essentially covers crimes resulting in violation of any of the “three (3) bedrock principles” of security (confidentiality, integrity and availability).

The following is a summary of the offenses relating to misuse of computers:

- a) Seeks to make it an offense for any person to cause any computer to perform any function with intent to secure unauthorized access to any computer material.
- b) Seeks to make it a further offense if any person who commits an offence referred to

in item (a) with intent to commit fraud, dishonesty or to cause injury as defined in the Penal Code.

- c) Seeks to make it an offense for any person to cause unauthorized modifications of the contents of any computer.
- d) Seeks to provide for the offense and punishment for wrongful communication of a number, code, password or other means of access to a computer.
- e) Seeks to provide for offenses and punishment for abetments and attempts in the commission of offenses referred to in items (a), (b), (c) and (d) above.
- f) Seeks to create a statutory presumption that any person having custody or control of any program, data or other information when he is not authorized to have it will be deemed to have obtained unauthorized access unless it is proven otherwise.

- Telemedicine Act 1997 (TA)

The TA is intended to provide a framework to enable licensed medical practitioners to practice medicine using audio, visual and data communications. To date, the Telemedicine Act has yet to be enforced. The TA is under the jurisdiction of the Ministry of Health (MOH).

- The Electronic Commerce Act 2006 (ECA)

The ECA was enacted and came into force on 19th October 2006. There are three main objectives regarding the enactment of this Act which is to reaffirm the validity and legal effect of transactions by electronic means, to remove legal obstacles to e-commerce and to provide certainty in electronic communication.

The scope of the Act also covers electronic commercial transactions conducted by the Federal and State Governments. However, the Act does not apply to certain transactions or documents, namely (1) power of attorney, (2) creation of wills and codicils, (3) creation of trusts, and (4) negotiable instruments.

Furthermore, the Act also contains provisions setting out the procedures in operating the online transactions or e-commerce. The ECA is under the jurisdiction of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC).

- Electronic Government Activities Act 2007 (EGAA)

The EGAA provides the legal framework for efficient and secure electronic government services by facilitating and enabling on-line government transactions with

the public and between government agencies. This is among the initiatives by the Malaysian government to promote e-commerce in providing the creation of critical mass for this sector.

Many public services are being offered through electronic means to enhance efficiency and transparency. Government e-procurement is implemented on a limited scope awaiting deregulation and harmonization processes.

- Consumer Protection Act 1999 (CPA)

An amendment to the CPA provides protection to consumers for involving on-line transactions. Section 2 of CPA states, “Subject to subsection (2) this Act shall apply in respect of all goods and services that are offered or supplied to one or more consumers in trade including any trade transaction conducted through electronic means”.

The CPA provides for a Consumer Claims Tribunal for an inexpensive dispute resolution mechanism. The CPA is administered by MDTCC.

- Data Protection Bill 2009 (DPB)

The DPB was proposed in parliament in 2009 and is still awaiting approval.

### *1.1.3. Effort to Build Confidence in E-commerce*

Malaysia was one of the pioneers amongst Asian countries to establish a new federal ministry, the Ministry of Energy, Communications and Multimedia which currently under Ministry of Information, Communication and Culture (MICC). The main function of this Ministry is to spearhead and promote the growth of ICT with the support of several agencies, including the Malaysian Institute of Microelectronic Systems (MIMOS) established in 1984, Multimedia Development Corporation (MDeC) established in 1996, and MCMC established in 1998.

Trade and e-commerce activities are identified as vital for Malaysia's economic growth in the 9MP. These agencies contribute to e-commerce by developing their own agenda. For instance, the Multimedia Development Corporation has been working on a National Electronic Commerce Masterplan designed to facilitate the growth of e-commerce in Malaysia. The four key elements in this Masterplan are to boost confidence in on-line trading, prepare a regulatory framework, build a critical mass of Internet users and introduce an electronic payment system. The Ministry of Domestic

Trade, Co-operatives and Consumerism is tasked with encouraging the development and growth of e-commerce utilization.

The MDTCC is currently working on the establishment of a trust-mark agency under its jurisdiction.

In order for e-commerce to be accepted and spread in society, consumers must be informed about how their concerns on the security of electronic exchanges or privacy issues are addressed particularly with the development of internet payment systems. Furthermore, e-commerce education and awareness programs among internet users would enhance the growth and adoption of online commercial activities.

#### *1.1.4. Need for International E-commerce and Co-operation*

In line with the importance of e-commerce, the Malaysian Government has allocated RM 12.9 billion for the 9MP. On a broader perspective, Malaysia is participating in the Asia Pacific Economic Cooperation's (APEC) efforts to contribute to the introduction of e-commerce laws, policies and regulations to facilitate e-commerce transactions internationally.

The future of e-commerce in Malaysia and the Asia region is bright. Governments and regulatory bodies are collaborating on a wider platform to ensure e-commerce law, policy and regulations are enforced to provide a guideline for traders to systematically utilize e-commerce and in tandem ensure protection for e-commerce users.

## 1.2. Singapore

### 1.2.1. E-commerce Market

According to the latest 2009 report by the Infocomm Development Authority of Singapore (IDA), only 36% of internet users had purchased products or services through the internet for the year 2008. The two most popular items bought online in the last 12 months were travel products (38%) and clothing, footwear, sporting goods or accessories (33%).

**Table 1.1. Goods and Services Purchased Over the Internet, 2008**

Items	15-24 yrs	25-34 yrs	35-49 yrs	50-59 yrs	60 yrs & above	15 yrs & above
Travel products	18%	39%	48%	35%	67%	38%
Clothing, footwear, sporting goods or accessories	56%	36%	21%	12%	0%	33%
Ticket for entertainment event	29%	33%	33%	24%	4%	31%
Books, Magazines, newspaper (in physical form)	7%	11%	15%	12%	7%	11%
Books, Magazines, newspaper (in digital form)	4%	5%	11%	5%	9%	7%
Computer software (in digital form)	4%	5%	6%	13%	20%	6%
Computer equipment or parts	4%	4%	6%	9%	43%	5%
Food or groceries	3%	7%	5%	3%	6%	5%
IT and telecomm services	4%	5%	5%	7%	16%	5%
Others	2%	6%	5%	8%	0%	5%
Financial products	1%	3%	5%	3%	22%	4%
Music products (in physical form)	7%	2%	4%	1%	0%	4%
Computer or video games (in digital form)	3%	1%	3%	4%	0%	3%
Photographic, telecommunication or optical equipment	4%	3%	3%	2%	0%	3%
Booking(s) for sports facility	2%	1%	1%	3%	0%	2%
Computer or video games (in physical form)	3%	1%	2%	0%	0%	2%
Movies, short films or images (in digital form)	1%	2%	2%	3%	0%	2%
Movies, short films or images (in physical form)	2%	2%	3%	0%	0%	2%
Music products (in digital form)	2%	1%	3%	2%	9%	2%
Health related / facial products	1%	2%	3%	6%	0%	2%
Computer software (in physical form)	2%	1%	0%	3%	14%	1%
Electronic products	1%	1%	2%	0%	0%	1%
Hampers / flowers	0%	1%	1%	3%	0%	1%

*Base:* Online shoppers aged 15 years and above who had made at least one online purchase in the last 12 months.

[http://www.ida.gov.sg/doc/Publications/Publications\\_Level3/20090218183328/HH2008\\_Mgt\\_Report.pdf](http://www.ida.gov.sg/doc/Publications/Publications_Level3/20090218183328/HH2008_Mgt_Report.pdf)

**Table 1.2. Main Reasons for Not Shopping Online, 2008**

Main reasons	15-24 yrs	25-34 yrs	35-49 yrs	50-59 yrs	60 yrs & above	15 yrs & above
Prefer to shop in person or deal personally with a service provider	26%	31%	34%	32%	34%	31%
Lack of interest	28%	28%	28%	33%	31%	29%
Privacy concerns	9%	11%	13%	9%	16%	11%
Security concerns	10%	13%	11%	8%	1%	10%
Trust concerns	11%	9%	8%	11%	10%	10%
Lack of confidence, knowledge or skills	4%	3%	3%	6%	5%	4%
Lack of means to make online payments	9%	3%	2%	1%	1%	4%
Inconvenient payment methods	2%	1%	0%	0%	1%	1%

*Base:* Online shoppers aged 15 years and above who had never made an online purchase.

[http://www.ida.gov.sg/doc/Publications/Publications\\_Level3/20090218183328/HH2008\\_Mgt\\_Report.pdf](http://www.ida.gov.sg/doc/Publications/Publications_Level3/20090218183328/HH2008_Mgt_Report.pdf)

### 1.2.2. Legal Systems Related to E-commerce

Singapore has a comprehensive legal system governing businesses that engage in e-commerce. The categories are as follows:

- Copyright & the Internet

The Copyright Act provides that copyright materials sent over the Internet or stored on web servers are treated in the same manner as copyright material in other media. For instance, incidental copying as a result of browsing websites is clearly not an infringement of copyright. On the other hand, downloading copyright materials without permission is infringement.

- Domain Names

Domain name must not:

- infringe any registered trade marks in Singapore.
- be identical to or confusingly similar with registered trade marks or company/business names in Singapore.
- infringe any third party rights under treaties or international agreements.

- Electronic Transactions & Contracts

The Electronic Transactions Act clearly defines the rights and obligations of the transacting parties. It also addresses the legal aspects (e.g. validity) of electronic contracts, use of digital signatures and concerns for authentication and non-repudiation.

- Protection of Personal Data

Parties collecting personal data online must comply with the same laws as those collecting personal data offline (e.g. duty of confidentiality and Banking Act). Businesses that wish to gain the trust of consumers may voluntarily adopt the Model Data Protection Code by the National Trust Council.

- Regulation of Online Merchants

Online merchants that wish to boost consumer confidence may voluntarily comply with the strict code of conduct imposed on online merchants under the TrustSg Programme. TrustSg accredited merchants display the TrustSg mark on their websites to signal to online customers that they are legitimate and trustworthy. Their status as TrustSg merchants will be revoked if they violate the TrustSg code of conduct.

- Spam Control

The Spam Control Act requires any party sending unsolicited bulk commercial electronic messages to comply with the guidelines under the Act. For instance, senders are required to provide receivers with a valid contact to unsubscribe. The Spam Control Act is part of the Spam Control Framework. The framework also encourages organizations to help control spam (e.g. by installing spam filtering software).

- Taxes Imposed on Internet Goods & Revenue

Under Singapore's tax laws, revenue earned from internet operations based in Singapore is subject to income tax. This applies to both personal and business income.

- Consumer Protection Fair Trading Act

This Act came into being on 1 April 2004 and it addresses cases of unfair practices in relation to a consumer transaction. The following acts are considered as unfair trade practices:

- To do or say anything, or omit doing or saying anything, if as a result, a consumer might reasonably be deceived or misled
- To make a false claim
- To take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer:
  - is not in a position to protect his own interests. For example, if the consumer is mentally disabled

- is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.
- Or to commit any of the 20 unfair practices specified in the Second Schedule of the Act as follows:
  - Making false claims about a product
  - Claiming that goods are from a certain country when they are not
  - Claiming that used goods are new
  - Lying about the history or extent to which second-hand goods have been used
  - Falsely claiming that goods are available in large quantities to attract buyers when there is actually only a limited number
  - Telling the customer that the product he bought needs repairing when there is no such need
  - Claiming that the product has been discounted when it has not
  - Charging a price higher than what was estimated by the seller, unless both parties agreed upon the final price earlier
  - Claiming that a product comes with a warranty when it does not
  - Representing that the seller has the authority to close a deal when he does not
  - Bullying a consumer by using oppressive terms in the sale contract
  - Using undue pressure to get the person to buy items
  - Giving out false vouchers
  - Using a scientific report to sell goods without stating that it is an advertisement
  - Falsely claiming that someone else is about to buy the goods to put pressure on the consumer
  - Saying that there are facilities where a consumer can go to get his items repaired, when there are none
  - Falsely claiming that gifts will be given out with the sale of a product
  - Stating that a sale is for a fixed period when it goes on for much longer
  - Giving false reasons for selling goods cheaply
  - Using small print to hide facts from consumers

The Consumer Association of Singapore is the specified body to take up an injunction to stop businesses from continuing with unfair practices.



### *1.2.3. Efforts to Build Confidence in E-commerce*

While there is a high penetration of 76% of households with internet access as of 2008, there are still many who are not comfortable with the use of the internet or do not see the need to use it in their daily lives. From amongst the households with access, only 36% have indulged in online shopping. The main reasons for not shopping online were 'preference to shop in person or deal personally with a service provider' followed by a 'lack of interest'. Privacy and security concerns were third and fourth, respectively.

The Government is aware of the situation and is implementing new initiatives to educate the public on the usefulness of e-Services. The IDA is working with other agencies to deploy a new program that will allow civil servants to work seamlessly as One Government, and has implemented the 'iGov 2010 Masterplan' to enhance e-Government service delivery to customers and connect citizens through the use of Infocomm technology. This will enable the public to become more comfortable about the use of technology as a medium for accomplishing their daily tasks.

In order to increase the awareness of e-commerce in Singapore, IDA also supports television programs that encourage Local Enterprises to adopt e-commerce in order to increase their competitive advantage. Such programs have been well received by the public with an estimated viewership of about 350,000 per episode. Industry players and partners have given positive feedback that this has helped companies to computerize their operations and enhanced their ability to reach out to their customers.

IDA is also aware of the need to build consumer confidence in transacting online. As such, they have tied up with CommerceNet and the Consumers Association of Singapore (CASE) to issue the TrustSg accreditation scheme. This accreditation is a nationally recognized trademark and is the de facto accreditation for companies that wish to signal their commitment to ensuring that their customers have a safe online environment to transact in.

Companies that are TrustSg accredited will be required to comply with the Model Data Protection Code. This outlines the minimum requirements for the protection of personal information, with guidelines as to how such data should be handled by the company in order to safeguard the privacy of the individual.

Other steps which the Singapore Government has taken to encourage e-commerce

adoption include the following:

- a) Various initiatives to encourage companies to base their e-commerce hub activities in Singapore. International companies such as Citibank, Sterling Commerce, Hewlett Packard, Compaq; as well as home-grown companies such as GES, Linbert Travel, and Advanced Manufacturing Online, have committed to anchor their key e-commerce activities in Singapore;
- b) Establishing a basic framework for a trusted, clear and predictable regulatory environment to support e-commerce is in place, with the enactment of the Electronic Transactions Act, and amendments to the Computer Misuse Act. An E-Commerce Business Policy Helpdesk has been set up to help businesses clarify policies relating to e-commerce;
- c) Creating a business and intellectual environment that encourages the development and growth of start-up technology-based companies;
- d) Delivering government services to the public electronically;
- e) Helping companies defray part of their e-commerce start-up and operational costs;

#### *1.2.4. Need for International E cooperation*

Although popular in the United States (US), e-commerce has yet to really catch on across Asia. In order for us to reach the e-commerce penetration and acceptance that the US enjoys, we need to first provide the conditions for us to be the 'buzz' centre for Asia in the area of e-commerce. As the Singapore market is small, it would be necessary to accelerate the pace of change and experimentation in the region.

We recognize the need to extend the e-commerce community to include our Asian counterparts and discover synergies and cooperation across countries. To facilitate such an exchange, we see the importance of allowing for easy meeting and partnerships of Asian entrepreneurs who understand the individual Asian markets, and can leverage on their own local networks for market penetration.

We also need to seek bilateral or multilateral collaboration with countries to address issues such as internet security and disputes. We believe initiative set up to address issues of disputes is important for e-commerce to grow. Such initiative should be vigorously pursued. Each country has its own laws and processes and so long as a country coming on board to participate in such collaboration understands the limitation

and agrees to work within the framework of the existing social and legal environment, such participation will be meaningful and fruitful.

### **1.3. Vietnam**

#### *1.3.1. E-commerce Market*

Four years after the promulgation of the e-Transaction Law and the IT Law, e-commerce in Vietnam has firmly taken root and maintained its strong momentum of growth, while continuing to expand its impacts across various socio-economic activities of the nation. This report depicts the progress of Vietnam e-commerce in the year 2009-2010 and based on policy analysis as well as empirical research, surveys, and interviews, the content of the report will present an overview of the macro environment for e-commerce development, as well as current practice of e-commerce application among businesses. Opportunities and challenges that have arisen upon Vietnam's accession to the WTO, results of years of implementation of the e-Transaction Law, outstanding improvement of the e-payment infrastructure, and e-commerce best practices among the business community will be highlighted.

The brightest hue in the e-commerce picture of this period is the evident and ever-increasing return on investment among businesses. This was also the first year when some complete e-commerce models have been implemented, with online payment tools integrated with the transaction process. From our analysis and evaluation, we believe that vigorous movements in the year 2009-2010 will create a strong momentum for Vietnam e-commerce to continue its steady and substantial growth in the years to come.

#### (1) Vietnam E-commerce progress

After the first stages for e-commerce development in Vietnam had been completed, e-commerce was established and officially recognized by law. With thorough preparation and vigorous efforts demonstrated by both the business community and the public sector, "it may be foreseen that from the year 2006 e-commerce in Vietnam will progress to the second stage of rapid growth". This assertion has been proven true by the study on various aspects of e-commerce application, particularly the survey on the e-commerce status of around 2100 enterprises nationwide in the year 2009. Vigorous and all-round development of e-commerce during 2008-2010 has spawned confidence that Vietnam will achieve the major goals set out by the Master Plan for E-commerce

Development of the 2006-2010 Period.<sup>3</sup>

Annually, MOIT Vietnam has been publishing Vietnam E-commerce which presents a panorama of e-commerce development in the past year. This overview will be the thumbnail of that panorama, which may miss out on the details but will help readers grasp the major features of e-commerce development in Vietnam till the end of the year 2009.

**Return on e-commerce investment among businesses is evident and ever improved:** One of the survey results by the Ministry of Industry and Trade (MOIT) of more than 2000 enterprises throughout the country in 2009 showed that nearly 100% of enterprises implemented e-commerce application at different scales and levels bringing good efficiencies and benefits for the above mentioned enterprises. Implementing the Master plan on e-commerce development for the 2006-2010 periods includes providing online public services and online training. On that basis, the report put forward some recommendations for better implementation in e-commerce activities in 2010 as well as laying the foundation for the construction of the Master Plan on e-commerce development in the 2010-2015 periods.

The highlight in e-commerce application in 2009 is the increase in the software utilization rate serving for production and business activities. Aside from 92% of businesses using accounting software, enterprises bravely invest and implement many other specialized softwares such as human resource management software (43%), supply chain management (32%), client management (27%) and enterprise resource planning (9%). The implementation of these softwares has helped to optimize and improve the product and business efficiencies of enterprises. Moreover, until now, most enterprises have paid attention to use of online public services provided by state agencies. The efficiency of e-commerce application in 2009 was very obvious. Only 5% of the total cost is spent for e-commerce and information technology investment but 33% of business revenue comes from order forms through electronic means.

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<sup>3</sup> Prime Minister's Decision 222/2005/QĐ-TTg dated 15/9/2005 on approving the Master Plan for E-commerce Development of the 2006-2010 Period.

*In the last 5 years, information technology- telecommunications in Vietnam including telephone system, Internet, broadband.... made great progress and were more advanced than neighboring countries like Indonesia and the Philippines. Although, the Internet in Vietnam has some limitations in the usage and access speed. However, it can be seen that Vietnam is the leading country in the growth despite the development in information technology- telecommunications not being as fast as Thailand and Malaysia. It was shown that approximately 25% of the Vietnam population are Internet users. (Source: <http://www.rfa.org/vietnamese/VietnameseNews/vietnamnews>)*

Moreover, the brightest hue in 2009's picture is the clear and upward trend of return on investment on e-commerce. More and more businesses believed that their revenue from orders placed through electronic channels increased. The statistics show strong businesses' interest in e-commerce and their determination to turn its potential to practical efficiency. The most positive sign is that more than 70% of businesses are confident about increasing revenue from electronically placed orders in the time to come.

The above results must be attributed to the improved rate and structure of e-commerce investment in recent years. On the one hand, the rate of investment saw a major increase, with 50% of the surveyed enterprises spending more than 5-8% of the annual operation expenses on e-commerce application. On the other hand, investment has been structured more appropriately, with about half of the total expenses invested in hardware and one fifth in training activities. As compared with the year 2005, this shift of investment from hardware to human resource development demonstrates a swift progress in both the practice and approach to e-commerce implementation in businesses. However, the investment rate for software and solutions has remained almost unchanged in the past 3 years, at around 23% of the total e-commerce expenses, posing a major challenge to various players in the field for improving this rate in the immediate future.

## (2) Internet and IT infrastructure

Many businesses participate in e-marketplaces, and have Internet connection and local area networks (LANs). The following table shows the statistics on Vietnam Internet development up to January 2010.

**Table 1.3. Statistics on Vietnam Internet Development 2010**

 BỘ THÔNG TIN VÀ TRUYỀN THÔNG <b>TRUNG TÂM INTERNET VIỆT NAM - VNNIC</b>	
Report on internet statistics of Vietnam <b>Tình hình phát triển Internet tháng 1/ 2010.</b> Statistics on Internet development upto 1/2010	
- Số người sử dụng : <i>Users</i>	23068441
- Tỷ lệ số dân sử dụng Internet : <i>Users per capita</i>	26.89 %
- Tổng băng thông kênh kết nối quốc tế của Việt Nam : <i>Total International connection bandwidth of Vietnam</i>	96320 Mbps
- Tổng băng thông kênh kết nối trong nước: <i>Total domestic connection bandwidth</i>	124517 Mbps
(trong đó băng thông kết nối qua trạm trung chuyển VNIX: <i>(Connection bandwidth through VNIX)</i>	49000 Mbps)
- Tổng lưu lượng trao đổi qua trạm trung chuyển VNIX : <i>Total VNIX Network Traffic</i>	49510246 Gbytes
- Tổng số tên miền .vn đã đăng ký: <i>Dot VN domain names</i>	136953
- Tổng số tên miền Tiếng Việt đã đăng ký: <i>Vietnamese domain names</i>	4895
- Tổng số địa chỉ IPv4 đã cấp : <i>Allocated Ipv4 address</i>	6903296 địa chỉ
- Số lượng địa chỉ IPv6 qui đổi theo đơn vị /64 đã cấp : <i>Allocated Ipv6 address</i>	42065950720 /64 địa chỉ
- Tổng thuê bao băng rộng (xDSL) : <i>Total broad bandwidth Subscribers</i>	3042738

Source: <http://www.thongkeinternet.vn/jsp/trangchu/index.jsp>.

### (3) E-payment saw significant improvement

Businesses continuously viewed the lack of a functional e-payment as the second largest obstacle to e-commerce development during surveys conducted from 2008 to 2009. However, the period of years 2009-2010 has seen rapid and all-round progress in this area.

At the macro policy level, at the beginning of the year 2009 a significant text related to e-payment came into effect, namely Prime Minister Decision 291/2006/QĐ-TTg approving the 2006-2010 Plan for Non-cash Payment Implementation and Vision towards the year 2020. In the very first year of this Plan's implementation, the banking sector recorded several outstanding accomplishments. Firstly, the entire banking sector has had 15 banks installing and utilizing 8,300 ATMs and 70,000 POS devices. Secondly, 29 banks have issued nearly 20 million payment cards and formed

several card alliances, of which the two alliances Smartlink and Banknetvn account for a combined 90% market share and are working together to unify the national market for card payment. Commercial banks have set roadmaps for gradual transition from magnet cards to cards using electronic chips. Thirdly, information technology has been applied to most transactions among and within the State Bank, commercial banks, and credit institutions.

Currently, around 25 banks are providing customers with Internet banking and SMS banking services. Card payment has become more popular, with increasingly diverse applications. Suppliers of electronic payment services expanded to include other types of businesses aside from banking institutions. Some payment gateway models have been formed and started to function. The year of 2009 is also a milestone year in the sense that it was the first year when online payment was implemented on some Vietnam e-commerce websites, namely Pacific Airlines, 123mua!, Viettravel and Chodientu.<sup>4</sup>

(4) Awareness raising and training of e-commerce were brought to a new level

In 2009 e-commerce awareness raising and training activities continued to be vigorously promoted throughout the country and scored significant results. First and foremost, many businesses not only recognized the great benefits yielded by e-commerce, but also saw the need of collaboration for mutual support during e-commerce implementation. The most active enterprises in this field have become founders of the Vietnam E-commerce Association (Vecom), which was established in mid-2007. A number of grand e-commerce events were launched and exposed to wide publication through various media, such as the Vietnam E-commerce Forum (Vebiz), Trustmark programme for E-commerce Website Evaluation and Ranking Program (TrustVn), Student with E-commerce Program (Digidea), and events related to the awarding of the E-commerce Golden Cup.

In the year 2009, the Ministry of Industry and Trade (MOIT) continued to be active in short-term training programmes for state employees and e-commerce businesses. Many training courses on e-commerce state management and e-commerce application skills have been conducted, with the coordination and assistance of various provincial

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<sup>4</sup> At the corresponding addresses [www.pacificairlines.com.vn](http://www.pacificairlines.com.vn), [www.123mua.com.vn](http://www.123mua.com.vn), [www.viettravel.com.vn](http://www.viettravel.com.vn) and [www.chodientu.vn](http://www.chodientu.vn).



Departments of Trade and other organizations, including the Chamber of Commerce and Industry. Formal training on e-commerce continues to be of high interest to many universities. Several schools have planned for further investment in e-commerce training, with a view to completing the curriculum and improving the technology infrastructure for training, gearing training towards the dynamic and ever-changing practice of e-commerce businesses.

***E-commerce training activities:***

E-commerce awareness raising activities have blossomed in the past three years with active participation of the media such as newspapers, radios and televisions. Besides several exclusive IT newspapers and magazines, most major newspapers have created a specialized IT and e-commerce column. The Voice of Vietnam Radio, Vietnam Television and Digital Television have had their special programs on “information technology application in daily life and business”. Also, propaganda through contests, polls and awards has produced great impacts on businesses and consumers. Some activities have become annual events and gained an increasingly high reputation and popularity such as the Trustmark program for e-commerce websites conducted by the Ministry of Trade in cooperation with the Vietnam Informatics Association, or “e-commerce events of the year” annual polls conducted by the media. Several new e-commerce prizes and awards have been introduced such as the *E-commerce Gold Cup* presented by the Vietnam Informatics Association, the *Sao Khue award for e-commerce solutions* by the Vietnam Software Association or the *BIT Cup* by PC World magazine.

***1.3.2. Legal systems related to e-commerce***

The legal framework for e-commerce has fundamentally been established: The legal framework for e-commerce has been basically completed, thanks to a series of legal texts guiding the implementation of the e-Transaction Law and the Law on Information Technology that were promulgated during the years 2007-2009. Various legal texts are established in the banking sector such as the State Bank Governor’s Decisions on Procedures for Designating, Managing and Using Digital Signatures and C/A Services in the Banking Sector, as well as Procedures for Bank Cards Issuance, Payment, Usage, and Support Services. The following table shows important IT and

e-commerce legal texts. Now, in Vietnam, thanks to the development of e-commerce, electronic documents are becoming increasingly popular in business transactions, especially during the contracting process. Regulations, the E-transaction Law, Decree on E-Commerce, and Decree on E-transaction in Financial Activities have formed a substantial basis for the use of electronic communications in commercial transactions. However, the laws stipulate those cases where a high level of information authentication is required.

**Table 1.4. E-commerce and IT Policies Promulgated in The 2007-2009 Period**

<b>Date</b>	<b>Name of legal texts</b>
05/4/2007	Decision No 05/2007QD-BBCVT issued by the Ministry of Post and Telecommunications on complaint and dispute settlement between the service providers to the postal service, express, telecommunications and Internet
24/12/2008	Circular No. 09/2008/TT-BTTTT by the Ministry of Information and Communication Management guidelines Internet resources usage and management
24/12/2008	Circular No 10/2008/TT-BTTTT by the Ministry of Information and Communication solves disputes on national name ".vn"
31/03/2009	Decision No 48/2009/QD-TTg by the Prime Minister approved the plan on information technology application in the operation of state agencies from the 2009 to 2010 period
03/04/2009	Decision No 50/2009/QD-TTg of the Prime Minister promulgating the Regulation on the Software Industry Management Development Program and Digital Content Industry Development Program in Vietnam"
01/6/2009	Decision No 698/QD-TTg of the Prime Minister approving the plan on human resources information technology development by 2015 and orientation to 2020
14/4/2009	Document No. 578/HQH-NV by the Customs Department of Hanoi regulates customs procedures for import software through the Internet
21/5/2009	Decision No. 2420/QD-BCT by the Ministry of Industry and Trade issued the plan on providing online public services
10/06/2009	Decision No 594/QD-TCT of the General Department of Taxation promulgated the Regulation on information technology application in taxation activities
17/7/2009	Document No. 4846/VPCP-TTDT issued by the Government Office on implementing a Memorandum of Understanding between the governmental office of Vietnam with the Ministry of Administration and Public Safety South Korea on information data Project through the Internet of Electronic Government of Vietnam.
29/7/2009	Decision No. 1830/QD-BTC by the Ministry of Finance on the pilot

	implementation of applying documents through the Internet for taxpayers
30/7/2009	Direction No. 04/CT-BTTTT by the Ministry of Information and Communication on strengthening supervision to prevent spam on mobile telecommunications
31/07/2009	Decision No 884/QD-TCT issued by the General Department of Taxation on the registration process for management and filing tax returns via the Internet by taxpayers
12/08/2009	Decision No. 103/2009/QD-TTg issued by the Prime Minister on the amendment and supplement of some provisions of Decision 149/2005/QD-TTg on the pilot implementation of e-customs procedures
25/11/2009	Circular No 222/2009/TT-BTC of the Ministry of Finance guide to the pilot e-customs procedures
14/12/2009	Circular No 235/2009/TTLT/BTC-BGTVT-BTTTT of the Ministry of Finance, Ministry of Transport and Communications, Ministry of Information on guiding the customs information exchange and supply, information on filing tax in customs, taxation, transportation, information and communications
02/3/2009	Circular No 03/2009/TT-BTTTT of the Ministry of Information and Communication the regulates management code, certification on code management for advertisement suppliers by email; advertisement service provider by messages; message service providers by the Internet
16/3/2009	Circular No 50/2009/TT-BTC of the Ministry of Finance on guiding electronic transactions in the stock market
14/12/2009	Circular No 37/2009/TT-BTTTT of the Ministry of Information and Communication regulating procedures and documents related to licensing, registration, authentication digital signature providers

*Note:* Updated by March 2010, for previous legal texts see more at the Vietnam report for ERIA in 2008.

**Figure 1.2. VietNam Competition Authority Website**



**EC and Consumer protection institutions:** Consumer protection is one of the responsibilities of state management and is the responsibility of business entities, some EC activities as well as online consumers rights are defined in legal texts related to the drafted Consumer protection Law. In practice, the more the market economy develops and the more the trade liberalization increases, the more problems that effect consumer's interests. In 1999, the National Assembly Standing Committee approved the Ordinance on the protection of consumer’s interests. (Ordinance No.13/1999/PL-UBTVQH10 dated 27/04/1999). On 02/10/2001, the Government issued Decree No. 69/2001/ND-CP detailing the implementation of the Ordinance on the protection of consumers' interests. According to this Decree, the Ministry of Science, Technology and Environment (which now is called Ministry of Science and Technology) is responsible to the Government for state management of consumer protection nationwide.

***State Management Agencies:*** The Government has assigned state management of consumer protection to the Ministry of Industry and Trade (MOIT) shall exercise uniform state management of consumer protection. The Competition Administration Department shall be responsible for assisting the Minister of Trade in exercising MOIT's state management functions. The functions, duties, powers and structure of Vietnam Competition Administration Department regarding consumer protection are stipulated in the Decree No. 06/2006/ND-CP of the Government dated 9 January 2006.

The Competition Administration Department under the Ministry of Trade is the agency helping Minister of Trade to perform state management over consumer protection nationwide. Beside, consumer protection is also mentioned in other legal documents such as: Civil Code (2005), Criminal Code (2000), Trade Law (2000), Competition Law (2004), Law on Standard and Technical Standardization (2006), Law on Environment Protection (2005), Ordinance on Product Quality (1999), Ordinance on Hygiene and Food Safety (2003), Ordinance on Advertising (2001), etc

***Non-government organizations:*** According to laws, Vietnam Standard and Consumer Protection Association (VINASTAS) is a non-government organization that plays an important role in consumer protection. At present, 27 Consumer Protection Associations that are located in 27 provinces, and centrally-run cities nationwide are members of the VINASTAS (hereinafter called as the local associations). The Provincial People's Committees established these local associations. They are members of the VINASTAS on basic of its approvals.

In the future, to obtain good results in consumer protection, it's necessary to have not only active and close co-ordination between the above-mentioned agencies and associations, but also positive participation of media agencies and consumers.

**Guideline for complaints:**

The consumer shall lodge complaints with the following agencies and organizations in the following ways:

- Directly lodge complaints against organizations/individuals producing or trading the goods, services that he/she has bought or used.
- Lodge complaints through Standard and Consumer Protection Associations, local Consumer Complaint Offices or State competent bodies against organizations/individuals producing or trading the goods, services.
- Lodge complaints with state management agencies: (Department of Trade/ Department of Trade and Tourism; VCAD; related specialist agencies (Market Controlling Department; Food Safety Department, Vietnam Trade Promotion Agency...))
- Sue the competent court to request for compensation in accordance with the law in the case that he/she has sufficient and precise evidence and that producing or trading organizations/individuals have not given satisfactory solutions.

***In the case of lodging complaints/ denouncement with VCAD, consumers must make written complaint dossiers which include:***

*1) Complaints/ Denouncements:*

- State the date of submitting the complaint/denouncement; name and address of the complainant; name and address of the complained/denounced offices/organization/individuals, contents and reasons for complaining and the complainant's request.
- Are signed by the signature of the complainant.
- In the case that the complaint/denouncement is lodged through a representative, the representative must have legal documentary proof of representation.

*2) Attached evidences:* Receipts, warranty card; products and other related documents, etc.

**Setting up ADR system:** to collect complaints from consumers, VECOM (Vietnam E-commerce Association) is now setting up ADR mechanisms to support dispute resolution services. Through ADR services, VECOM requests merchants' websites provide easy-to-find and understandable notice on how EC consumers can successfully

and meaningfully contact the merchants to solve problems related to online transactions. Moreover, VECOM also exchanges complaints information with other associations such as VCCI, VINASTAS, VNISA.

**Collecting complaints and mechanisms for dispute resolution services:** *In addition to VECOM setting up the ADR system, other associations such VCCI, VINASTAS, and VNISA also cooperate together to support collecting complaints (including e-commerce complaints if any) procedures and exchanging information with each other.*

### *1.3.3 Efforts to build confidence in e-commerce*

#### (1) Raising awareness for students, consumers and businesses in using e-commerce

Increasing confidence is the most important thing for business and society in the implementation of a new business method – i.e. electronic commerce. Now, in Vietnam there are many methods for raising social awareness through e-commerce training activities and events, including e-commerce training in schools and universities; using mass media (radio, television and digital devices for public support and education).

Regarding the development of human resources for e-commerce, many universities nationwide have established e-commerce departments and issued EC teaching materials for formal training courses. By the end of the year 2009, more than 75% of economics – trade universities in the North had e-commerce courses in their curriculum with at least three credits (the survey in 2008 was conducted by the VECITA- MOIT (Ministry of Industry and Trade)).

Some universities had master programs on e-commerce. However, the lecturer's capacity and quality of the e-commerce textbooks was still an issue of major concern when e-commerce was put into universities' teaching curricula. As for short-time training courses, universities and organizations were quite active in providing one-week courses on e-commerce. The Ministry of Industry and Trade took the lead in organizing e-commerce training courses for managerial trade officers in most provinces and cities all over the country. Within the scope of the Project on "Supporting enterprise's information and technology application for integration and development"

phase 2005-2010, the Vietnam Chamber of Commerce and Industry took the initiative in organizing e-commerce seminars and training courses for provincial enterprises. Moreover, companies in the e-commerce sector have also actively participated in e-commerce training and awareness raising for consumers as well as potential partners.

**Awareness raising on data privacy protection:** Until now, the greatest obstacles to the development of e-commerce in Vietnam are the non-enabling legal environment, lack of information technology and Internet infrastructure, low social awareness, and traditional trading and payment practices. The issue of information security in cyber space has become a major obstacle to e-commerce participation by both businesses and consumers. Following the general trend of global e-commerce, in the years to come, the issue of data privacy will arise as one of the greatest obstacles to the development of e-commerce in Vietnam, especially for the B2C mode of transactions.

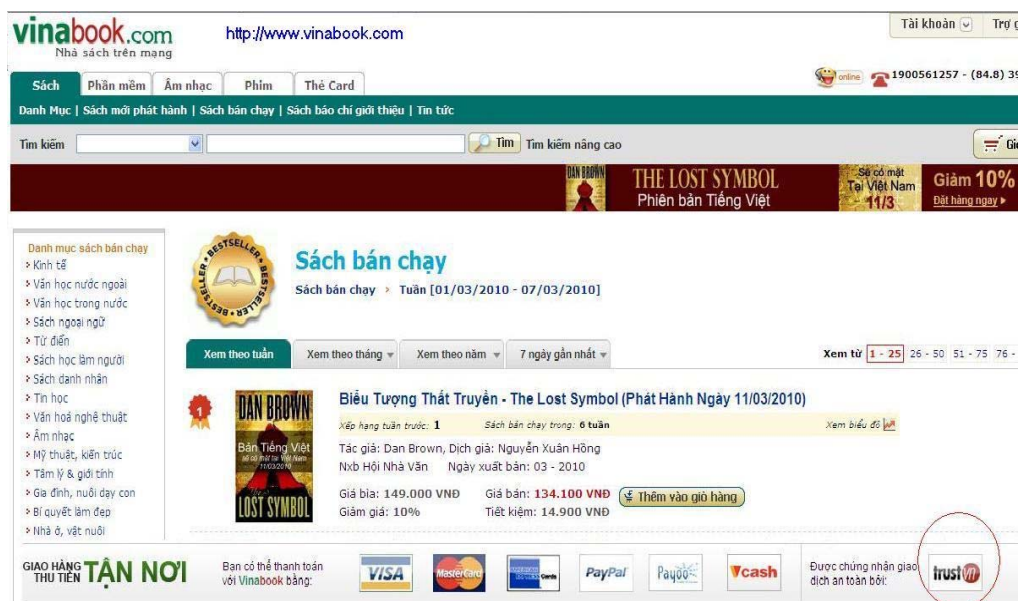
Vietnam has now actively joined with APEC members to implement activities in data privacy protection. Since 2008, Vietnam has been required to further promote awareness of data privacy issues among organizations, businesses and citizens through publications, seminars, workshops, and especially the trustmark endorsement for e-commerce websites.

## (2) Running the Trustmark program for Vietnam e-commerce websites

Amid the blossoming of e-commerce websites in recent years, domestic and foreign enterprises as well as consumers need some official guidelines that would assist their choice of the most trustworthy websites to utilize e-commerce in an efficient manner, that both match the enterprise's business objectives and maintain consumer faith. To meet these practical demands of society, since 2005 the e-Commerce Department, the Ministry of Trade (which is now the Vietnam e-Commerce and Information Technology Agency, Ministry of Industry and Trade) has annually conducted the TrustVn Program in cooperation with the Vietnam E-Commerce Association (VECOM).



**Figure 1.3. TrustVn in <http://www.vinabook.com>**



**Figure 1.4. TrustVn – The Trustmark Program for Vietnam e-Commerce Websites**

**TrustVn Program's objectives:** Details on the Program are available at: [www.trustvn.gov.vn](http://www.trustvn.gov.vn).

- Gathering all Vietnam's e-commerce websites from B2C and C2C websites to B2B e-marketplaces.
- Evaluating and selecting outstanding websites of the year to be verified by the Trustmark.
- Promoting websites with trustmarks to consumers and companies so that they are confident in shopping online and conducting online transactions.
- Making recommendations on the criteria of trusted websites that online merchants should adopt to protect consumer interests.
- E-commerce websites meeting all the program's criteria can use the TrustVn logo for their advertisement and promotion.

Note: By 12 June 2008, The Vietnam E-commerce Centre (EcomViet) officially became the ninth member of the Asia-Pacific Trustmark Alliance (ATA). The accession to the alliance will assist EcomViet in recognizing trusted websites that met standards of

*protecting personal data and providing safe transactions. (Established in 2001 to raise public awareness and trust in e-commerce, ATA now has nine members, Vietnam's EcomViet as well as ECNetwork, Japan's Tradesafe, KIEC from the Republic of Korea, Mexico's AMIPCI, Singapore's CNSG, SOSA from Taiwan, and the US's TRUSTe).*

Now, in Viet Nam, many EC websites are sealed Trustmarks such as TrustVN, VeriSign.

**Figure 1.5. VeriSign in <http://www.Techcombank.com.vn>**

The screenshot shows the Techcombank website interface. At the top, there are logos for TECHCOMBANK and FAST e-bank. Below the logos is a login form titled "Internet Banking" with fields for "Tên đăng nhập:" and "Mật khẩu:", and a "Đăng nhập" button. A message below the form states: "Dịch vụ Internet Banking của Techcombank được hỗ trợ tốt nhất bởi trình duyệt Internet Explorer".

Below the login form is a promotional banner for "Tiết kiệm ONLINE" (Online Savings). It features a woman at a computer and text: "Giữ trọn niềm tin", "Tiết kiệm ONLINE", "...Chỉ cần nhấp chuột", and "Chỉ cần nhấp chuột và chuyển tiền từ tài khoản cá nhân sang tài khoản Tiết kiệm Online qua Internet Banking là bạn đã hoàn thành giao dịch gửi tiền." It also includes a "16 năm" anniversary logo and contact information: "Miễn phí 24/7 1800.588.822 | Hoặc gọi 04 3942 7444 www.techcombank.com.vn".

At the bottom, there is a "Dịch vụ khách hàng 24/7" (24/7 Customer Service) section with contact details: "Tel: +84-4-3942 7444 / 1800 588 822", "Fax: +84-4-3942 7663", and "Email: tcb\_support@techcombank.com.vn". There is also a language selection option: "Ngôn ngữ / Language: Tiếng Việt | English" and a "Đăng ký" (Sign Up) section with "Fast i-Bank | Fast e-Bank" options.

On the right side, there is a VeriSign Secured logo with the text "VERIFLY" and "ABOUT SSL CERTIFICATES".

#### 1.3.4. Need for International Cooperation

Along with the establishment of e-commerce websites and participating enterprises increasing in e-marketplaces, as well as increasingly intensive and effective application of e-commerce in enterprises all over the country, a number of e-commerce enterprises

have been born. Now, e-commerce in Vietnam is also global e-commerce (cross border trading) and international e-commerce and cooperation. Vietnam also needs to focus on the long-term international cooperation for e-commerce in the following categories.

(1) Enhancing and completing the e-commerce legal framework and capacity building for e-commerce dispute settlement

A series of legal texts guiding the implementation of the e-Transaction Law and the Law on Information Technology have been promulgated during the past few years. However, now there are some legal issues to be completed, relating to the use of Digital Signatures and C/A Services in the banking, finance and customs areas, as well as import-export, and insurance procedures for domestic and cross border trading. Thus, enhancing and completing the e-commerce legal framework are now very important and in demand for international cooperation in enhancing and completing the e-commerce legal framework.

Since 2008, online contracting and other online transactions such as online payment or digital product trading have increased rapidly both in terms of volume and value. As a result, civil disputes related to online buying and selling will become increasingly common. Also, disputes on the intellectual properties related to cyber space such as domain names and copyrights are predicted to elevate with increased complication. Moreover, the number of disputes between Vietnam and other countries' citizens while conducting trade and business activities on the Internet environment will also grow.

Meanwhile, the capacity of e-commerce dispute settlement in Vietnam is still low. Commercial courts, commercial arbitrators, telecommunications and commerce inspectors, competition administration agencies, consumer protection organizations, investigation institutions, etc., have not been trained in this field and have almost no experience in settling these types of disputes. One of the urgent missions of 2008 is therefore to enhance the capacity of e-commerce dispute settlement for relevant agencies and institutions.

Vietnam needs the support and cooperation of international organizations such as the WTO, APEC, UNCITRAL, UNCTAD, etc and other countries, territories such as

Japan, China, USA, Thailand, Taiwan, and Korea to learn and share information and knowledge for consumer protection and capacity building for e-commerce dispute resolution.

*Establishment of a safe and highly reliable marketplace in ASEAN and East Asia:* Nowadays commercial networks have been built mainly in many industries and require e-commerce support. It is expected that business-to-business transactions beyond national borders (cross border) will be further activated effectively based on EPA and FTA. Thus, business risks are addressed, such as personal information not being properly protected, and information technology and know-how of companies being divulged. Also, in e-commerce, it is pointed out that the anxiety over the reliability of the counterparts of transactions is greater than that of real transactions. Therefore, to create a large and highly reliable consumption market in ASEAN and East Asia, it is necessary to prevent such business risks that will be a hindrance to corporate activities in the future and to build a marketplace where companies and consumers may perform commercial transactions without anxiety. The Working Group 2 (establishment of a secure and safe e-commerce marketplace) with basic studies will be created to establish a secure and safe platform for e-commerce in ASEAN and the East Asian region, MOIT-VECITA is now joining as a member of the project and MOIT-VECITA hopes to cooperate with Japan and other countries to complete this project in the future.

(2) Setting up international e-commerce cooperation in different economic areas for trade facilitation

At the current time, Vietnam needs to further take part in multilateral international cooperation organizations, especially focusing on joining activities of APEC, UNCITRAL, and WTO in order to support and complete the e-commerce legal framework, as well as implement effectively international commitment to e-commerce. It is necessary to establish and popularize national electronic data interchange with international standards with the support and **cooperation** of **international** organizations such as UN/CEFACT, AFACT and other countries, territories for trade facilitation and electronic business technology transfers to Vietnam.

- (3) Receiving international supports to assist domestic business community in implementation e-commerce activities

More than 300,000 SMEs in Vietnam are operating with few manpower resources and low investment. They still cannot afford major investment in e-commerce. Whereas, according to the estimation on e-commerce application in recent years, participating in e-marketplaces yields more investment. Therefore, the e-commerce community needs support from international organizations as well as from developed countries to assist them more effectively in implementing e-commerce activities. Support from international organizations and from other countries is important to assist the domestic business community in enhancing capacity building as well as better e-commerce implementation.

**Conclusion:** In setting up international e-commerce cooperation between Vietnam and countries, territories are also one of the most important strategic trends for trade facilitation supported by the Vietnamese Government to develop the economy of the country.

- (4) Cross-border trouble cases

**CASE 1:** Carling (Hong Kong) Limited

*Source: MOIT (07/08/2009)*

As reported from Vietnam Trade Office in Hong Kong, Carling Limited Company defrauded some Vietnamese enterprises causing serious damages. Two Vietnamese Companies signed contracts to buy 500 tons of meat bone from Carling Hongkong Limited Company. They gave a partial of the money according to the contract via TTR. However, until now they have not received any information about the paid consignment and its partner as well.

According to the notice from Vietnam Trade Office in Hong Kong, The Ministry of Industry and Trade warned Vietnamese enterprises to be careful when doing business with Hong Kong partner to avoid similar consequences.

Carling Hongkong Limited Company was established by the Director from Cameroon, Mr. Pierre William Boyomo Giuntang and the Co-director and Secretary from Hong Kong, Mr. Thomas Tsang Ka Kau on 9<sup>th</sup> January 2004 in Hong Kong with

register license No (CR) 0878571. According to Hong Kong's Law, it is possible for a foreigner to establish his own company in Hong Kong with at least a person or a Hong Kong company playing a role as secretary company. It is not a compulsory for the foreign companies established in Hong Kong to have an own office. It is possible for them to use the address of their secretary companies to register and do business. However, due to the easiness in setting up a company in Hong Kong, many foreigners establish companies in Hong Kong to have a legal status to defraud other companies. The security company which is the only one contact in Hong Kong take no responsibility in the case.

**Investigation:**

Representatives of Hong Kong Trade Office came to the address of Carling Hong Kong limited Company. It is the address of the head office of a construction and real estate consultant company- THOMAS TSANG SURVEYORS LIMITED. Director of this company said that they only rent the location out to Carling Limited Company and they were hired to be Carling's secretary company. Now they cannot contact with Mr. Pierre William Boyomo Giuntang, the Director of Carling Limited Company.

NOTE: It is a warn for Vietnamese enterprises that all the above transactions are online with unreliable partner. The risk is very high because the payment is TTR

At first, Hong Kong Trade Office continues to contact with director of Carling limited company to ask money back for Vietnamese companies and to collect all needed documents for Vietnam consulate general in Hong Kong to call the help from Police Office in Hong Kong.

The Ministry of Industry and Trade recommend that Vietnamese enterprises should check the personal information of their partners before dealing with them. In the essential case, it is possible to ask for the consultancy from Vietnam Trade Office in Hong Kong.

**CASE 2:** Tuong An Ltd. Company

Source: *Vietnam Trade office in Indonesia*

Tuong An Ltd. Company sent a mail to Vietnam embassy in Indonesia to describe and complain the whole transaction process including seeking one chemical business

partner in Indonesia and having internet negotiation/ transaction (SWIFT Bank money transfer) and other transactions online.

Four times SWIFT Bank money transfers (from VIBank VietNam to a Bank in Indonesia):

- 1<sup>st</sup> : 15/12/2009 8.200 USD
- 2<sup>nd</sup> : 15/12/2009 42.000 USD
- 3<sup>rd</sup> : 15/12/2009 60.000 USD
- 4<sup>th</sup> : 29/12/2009 60% = all PERFORMA INVOICE equivalent 165.300 USD

Total 275.500 USD

After contacting with police Indonesia, Vietnam Trade Office was nearly impossible to help Tuong An Ltd. Company Vietnamese enterprises to find its business partner the and take their money back. It is a common opinion from most of appropriate authorities in Indonesia that taking legal proceeding is very expensive and complicated for overseas enterprises disputes.

**Resolution:** Vietnam Trade office recommended that Vietnamese enterprises should cooperate closely with the representative office of Vietnam in the local country to identify the legality as well as customs of their partners when taking part in international trade transaction.

**CASE 3:** Sai Gon Paper Company in HCM City

Source: *Vietnam Trade office in Indonesia*

Sai Gon Paper Company in HCM City has been cheated as the same way as Tuong An Company (above mentioned case) but with a more sophisticated trick- using **LC at sight**. In Indonesia, all fake business documents in cross-border trading (such as bill of lading, business licenses, CO, etc) which look nearly the real ones. Sai Gon Paper Company was failed in asking money back because its defraud partner dissolved and ran away.

**Resolution:** Vietnam Trade office recommended that Vietnamese enterprises have to check in cooperations with authorities in Viet Nam and overseas countries for validity of business documents in cross-border trading (such as bill of lading, business licenses, CO, etc).

**CASE 4:** Hung Hau Vessel Company

*Source: Vietnam Trade office in Indonesia*

In the case of Hung Hau Vessel Company, Vietnam Trade office in Indonesia was successful in asking money for rice transportation to Timor East back. Due to the change in market price, Timor East and the intermediary Indonesia did not pay the money on time and Indonesia cut all contact with Hung Hau Vessel Company causing many losses. The losses and the fine was 40.000 USD in total. Hung Hau vessel Company called the help from Vietnam Trade Office.

Vietnam Trade Office in Indonesia contacted with the Intermediary Indonesia and sent a diplomatic note to Timor East Embassy in Indonesia. After nearly a week, the Intermediary paid the money and fine to Hung Hau Vessel Company.

It is obvious that solving the dispute between 2 companies with specific legal status is much simpler. Therefore, Vietnamese enterprises should coordinate with Trade Office when doing business in Indonesia to avoid risks.

**Resolution:** Vietnam Trade office recommended that there are many businesses still find their partners through website Alibaba. The advantages are time saving and low cost but the risks are very high.



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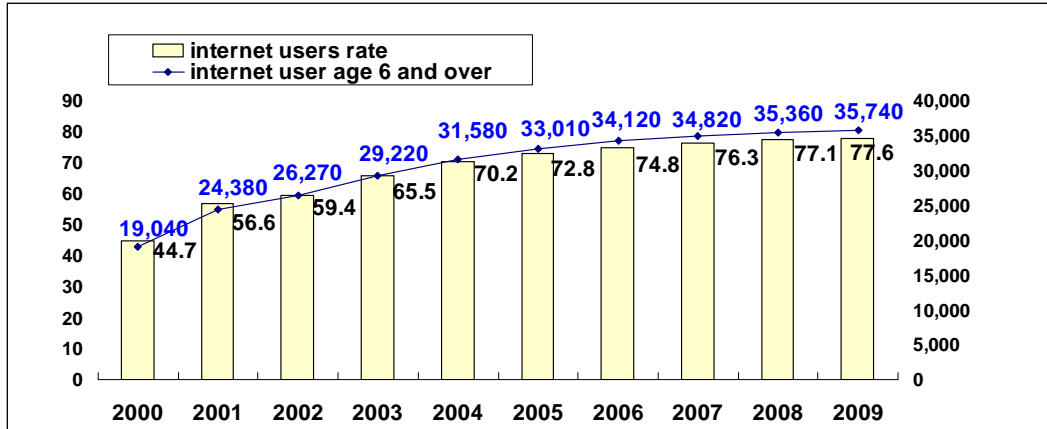
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## 1.4. Republic of Korea

### 1.4.1. E-commerce Market

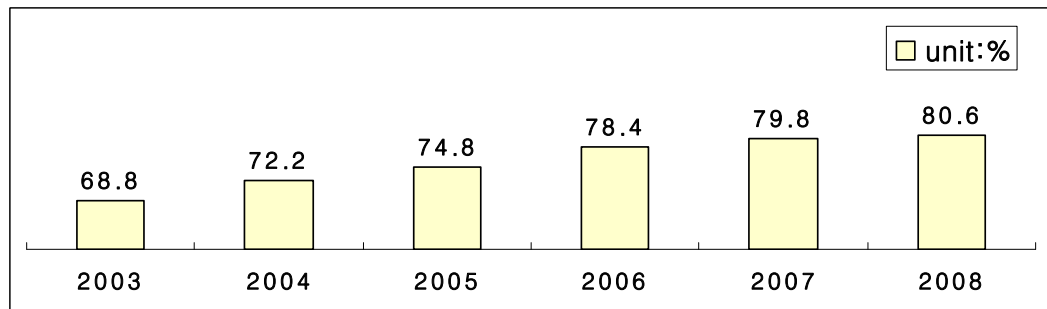
#### (1) Penetration Rate of Broadband Internet

**Figure 1.6. The Number of Internet Users and Its Utilization Rate**



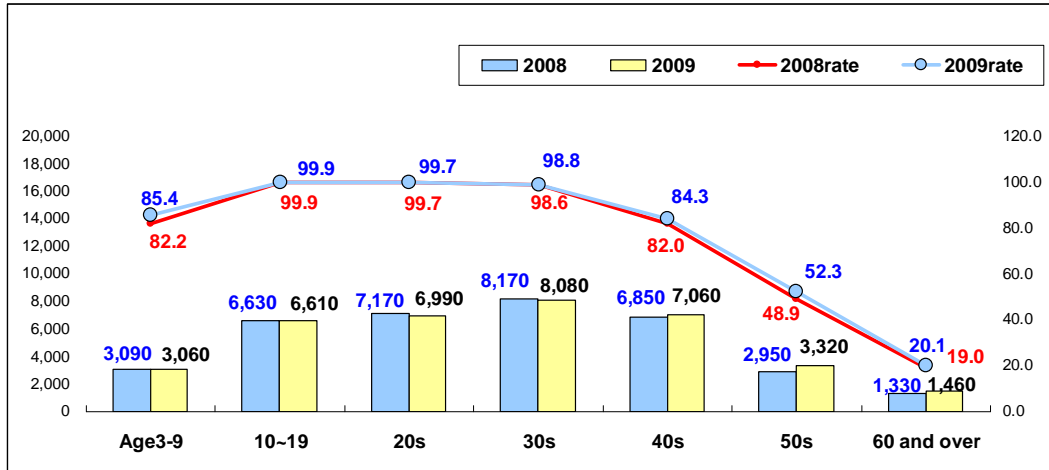
Source: Korea Communication Commission (KCC), Korea Internet & Security Agency (KISA), 2009 Survey on Internet Utilization, September 2009 (unit, % thousand persons).

**Figure 1.7. The Rate of Internet Access by Households**



Source: KCC KISA, Survey on the Internet Use, November 2008.

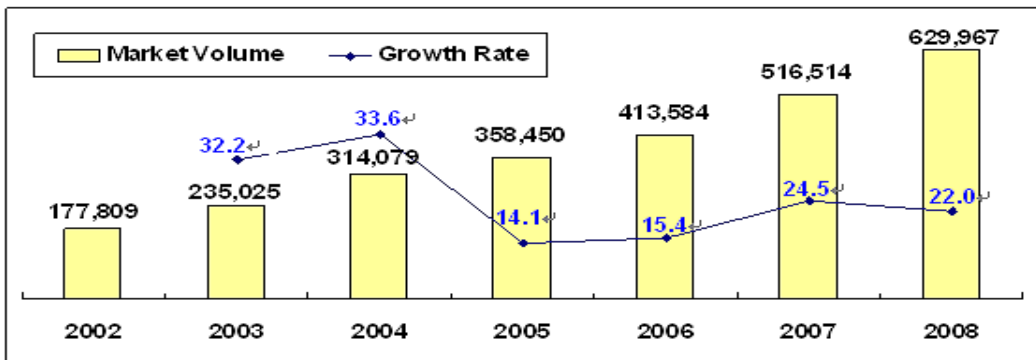
**Figure 1.8. Internet Utilization Rate and Internet Users by Age Group**



Source: KCC, KISA, September 2009 (Unit: %, thousand persons).

(2) Market Size of e-Commerce

**Figure 1.9. Volume and Growth Rate of Korean E-Commerce Market**



Note: Unit: won / US 1dollar =1150 won.

Source: Statistics Korea (KOSTAT), 2008 Annual and 4Q e-commerce and Online Shopping Trend, February 2009.

**Table 1.5. E-Commerce Market Volume by Business Type**

Type	2007		2008(E)		Year-on-year	
	Volume	Ratio	Volume	Ratio	Growth Amount	Growth Rate
<b>B2B</b>	464,456	89.9	560,135	88.9	95,679	20.6
<b>B2G</b>	36,801	7.1	52,266	8.3	15,464	42.0
<b>B2C</b>	10,226	2.0	11,660	1.9	1,434	14.0
<b>C2C and others</b>	5,062	1.0	5,907	0.9	875	17.4
<b>Total Transaction Amount</b>	<b>516,514</b>	<b>100.0</b>	<b>629,967</b>	<b>100.0</b>	<b>113,453</b>	<b>22.0</b>

Note: (E): estimate.

Source: KOSTAT, 2008 Annual and 4Q e-Commerce and Online Shopping Trend, February 2009.

**Table 1.6. B2B Commerce Market by Transaction Type**

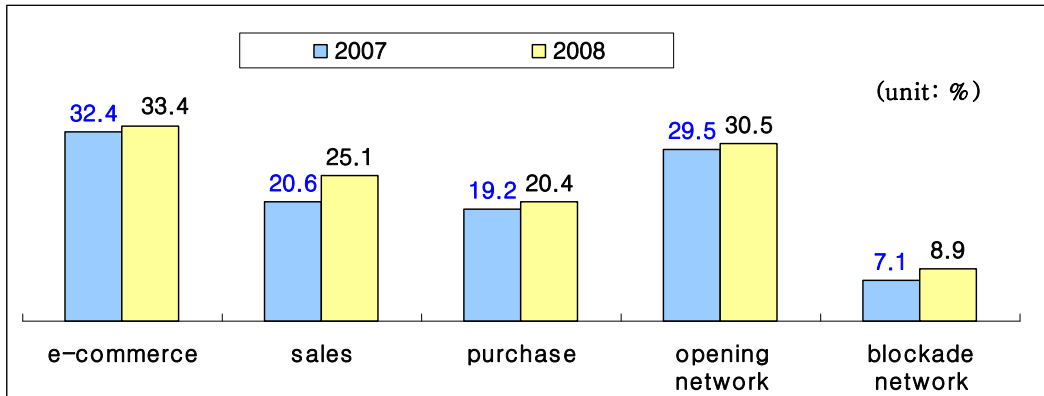
Type	2007		2008		Year-on-year	
	Volume	Ratio	Volume	Ratio	Growth Amount	Growth Rate
<b>Buyer-led</b>	321,058	69.1	380,902	68.0	59,844	18.6
<b>Seller-led</b>	119,246	25.7	146,929	26.2	27,683	23.2
<b>Broker-led</b>	24,152	5.2	32,304	5.8	8,152	33.8
<b>Total Transaction Amount</b>	<b>464,456</b>	<b>100.0</b>	<b>560,135</b>	<b>100.0</b>	<b>95,679</b>	<b>20.6</b>

Note: (E): estimate.

Source: KOSTAT, e-commerce in 2008 and in the Fourth Quarter 2008, February 2009.

(3) Utilization Rate and Number of e-Commerce Users

**Figure 1.10. Utilization Rate of e-Commerce by Companies (Multiple Responses)**



**Table 1.7. Use of E-Commerce Classified by Industry, KIEC 2008 (unit: %)**

	E-commerce	Sale	Purchase
<b>Banking &amp; Insurance</b>	64.3	64.3	27.3
<b>Construction</b>	62.0	57.6	32.6
<b>Electricity &amp; Gas</b>	55.5	39.7	49.6
<b>Publication &amp; Media</b>	53.6	36.7	53.6
<b>Hotel &amp; Restaurant</b>	51.3	32.4	34.7
<b>Service industry</b>	49.4	36.9	39.8
<b>Agriculture &amp; Fisheries</b>	48.3	48.3	32.0
<b>Whole sales</b>	38.1	34.4	29.0
<b>Mining</b>	37.9	28.8	18.2
<b>Realities &amp; Lease</b>	34.8	17.5	26.3
<b>Transport</b>	32.9	30.2	27.8
<b>Manufacture</b>	32.7	26.4	24.4
<b>Recycling &amp; Environment</b>	29.8	15.3	23.1
<b>Science &amp; Technology</b>	24.1	22.0	12.5
<b>Others</b>	46.1	25.1	41.1

Source: Korea Institute for Electronic Commerce (KIEC).

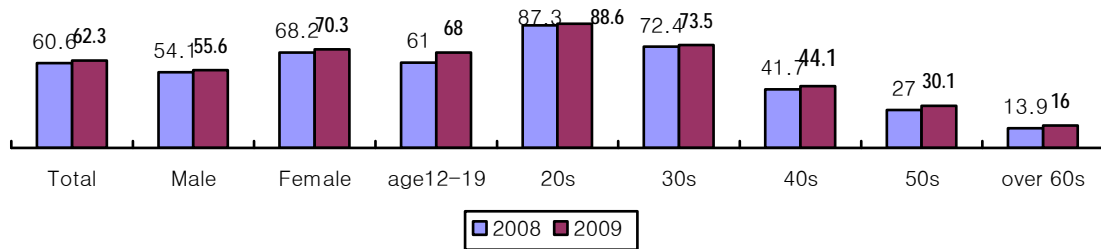
**Table 1.8. Online Shopping Transaction Volume**

Type of Transactions	2007		2008(E)		Increase over 2007	
	Volume	Ratio	Volume	Ratio	Growth Amount	Growth Rate
<b>B2C</b>	10,226	64.9	11,660	64.3	1,434	14.0
<b>Others (C2C excluding B2C and B2B, B2G)</b>	5,540	35.1	6,486	35.7	946	17.1
<b>Total Transaction Amount</b>	<b>15,766</b>	<b>100.0</b>	<b>18,146</b>	<b>100.0</b>	<b>2,380</b>	<b>15.1</b>

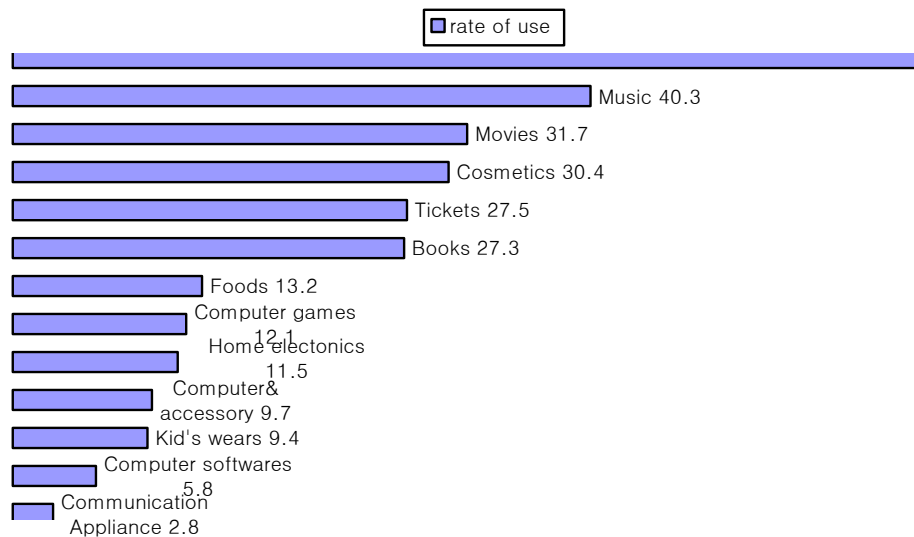
Note: (E): estimate.

Source: KOSTAT 2008 Annual and 4q e-commerce and Online Shopping Trend, February 2009.

**Figure 1.11. Utilization Rate of Online Shopping, KISA, KCC, September 2009**



**Figure 1.12. Purchase Items of Online shopping Users (Multiple Responses)**



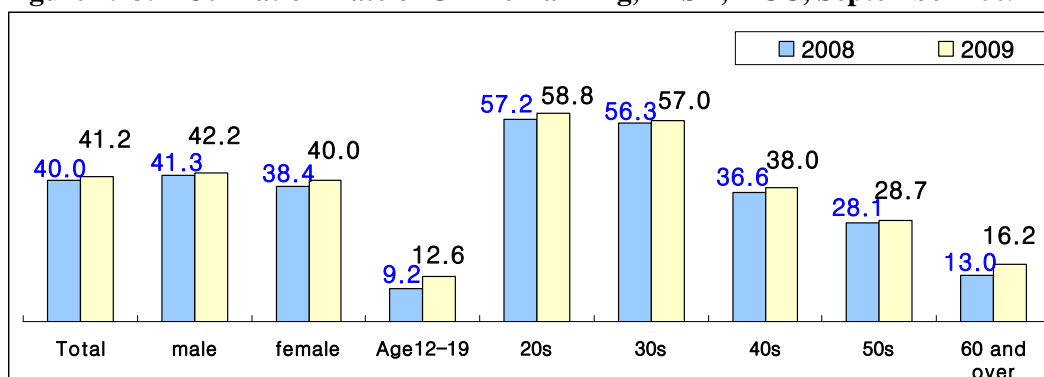
**Table 1.9. Number of Online Banking Users (Unit: Thousand People, %)**

Type	2004	2005	2006	2007	2008
<b>Individual</b>	<b>23,094</b> (6.2)	<b>25,303</b> (9.6)	<b>34,123</b> (34.9)	<b>42,396</b> (24.2)	<b>50,075</b> (18.1)
<b>Company</b>	<b>1,177</b> (17.5)	<b>1,434</b> (21.8)	<b>2,302</b> (24.8)	<b>2,520</b> (28.7)	<b>2,520</b> (9.5)
<b>Total</b>	<b>24,271</b> (6.7)	<b>26,737</b> (10.2)	<b>35,912</b> (34.3)	<b>44,698</b> (24.5)	<b>52,595</b> (17.7)

Note: ( ): Year-on-year growth rate.

Source: Bank of Korea (BOK), 2008 Online Banking Usage Statistics, February 2009.

**Figure 1.13. Utilization Rate of Online Banking, KISA, KCC, September 2009**



**Table 1.10. Volume and Number of Online Stock Trading**

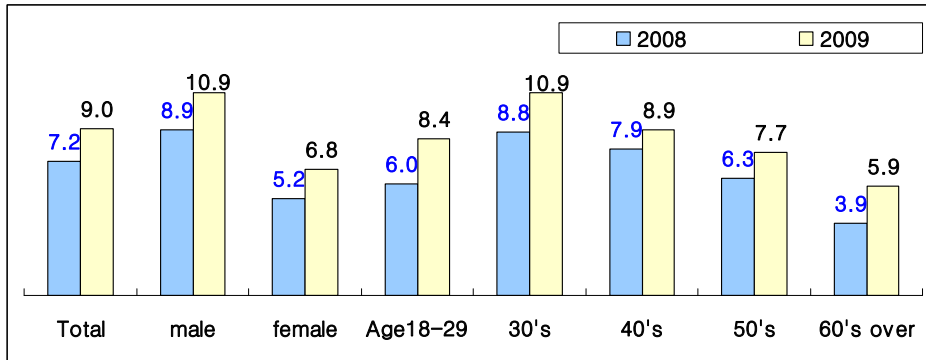
Type		2007(A)		2008(B)		Growth(B-A)	Growth Rate
Securities	Number of Transactions	877,458	(76.3)	1,014,773	(77.5)	137,315	15.6
	Transactions Amount	5,711,999	(58.4)	6,078,487	(57.1)	366,488	6.4

Note: (unit: thousand cases, billion won, %).

( ): proportion of electronic financial transaction out of total business FSS.

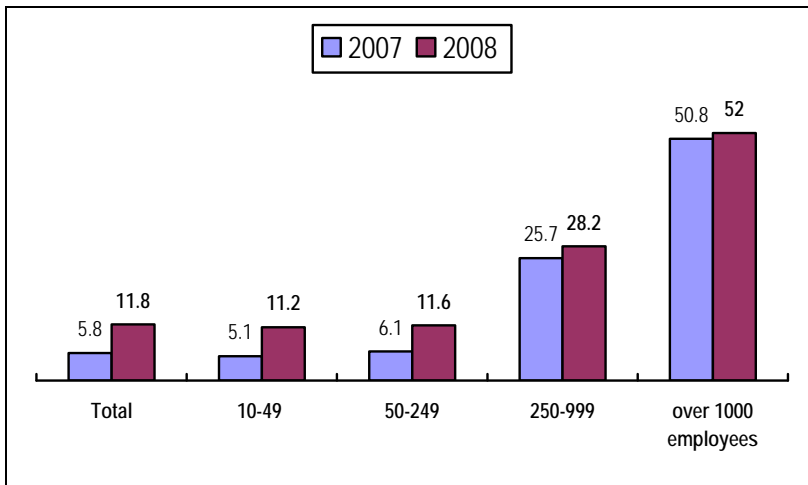
Source: 2008 Q4 and Annual Electronic Finance Performance, April 2009.

**Figure 1.14. Utilization Rate of Online Stock Trading, KISA, KCC, September 2009**



(4) Wired? or Mobile?

**Figure 1.15. Utilization Rate of Mobile Business, KIEC, 2008**





#### *1.4.2. Legal Systems Related to e-Commerce*

##### (1) Basic Act on Electronic Commerce and the Electronic Signature Act

Korea has two basic e-commerce laws: (1) the Basic Act on Electronic Commerce<sup>5</sup> as an umbrella law that broadly defines e-commerce as a concept, requirements of electronic documents and e-commerce dispute resolution; and (2) the Electronic Signature Law<sup>6</sup> that stipulates the legal effects and certification requirements of digital signatures. Public or private organizations meeting certain eligibility requirements can become official certification agencies to endorse signed electronic contracts. Both laws were implemented in 1999.

These laws are far from complete in their coverage, and they lack clear definitions of legal jurisdiction among government agencies over many different aspects of e-commerce. Still, the legislation provides the basic framework for domestic e-commerce. The government continues to improve existing laws and to create new legislation to keep up with changes in e-commerce.

The Basic Act on Electronic Transactions was amended, with effect from July 2002, clarifying a legal relationship between the sending and receiving ends of a digital document. This gave the recipient greater contractual responsibility to establish its authenticity. The revised law also required e-commerce providers to take specific steps to protect the trade secrets of their clients.

Under Article 32 of the Basic Act, the Electronic Commerce Mediation Committee (ECMC) was established in 2001 in affiliation with the Korea Institute for Electronic Commerce to resolve e-commerce disputes. In addition under Article 18 of the Basic Act the National IT Industry Promotion Agency (NIPA) established the eTrust certification program. The Current Basic Act on Electronic Commerce adopted the UNCITRAL Model Law on Electronic Commerce. Korea is also one of 18 signatory countries for the UN Convention on the use of Electronic Communications in International Contracts and expects to ratify it in the near future.

Meanwhile, an amendment of the Electronic Signature Law broadened the scope of

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<sup>5</sup> This law was enacted in 1999 under the jurisdiction of the Ministry of Knowledge Economy (MKE).

<sup>6</sup> The Electronic Signature Law was implemented in 1999 under the jurisdiction of the Korea Communication Commission (KCC).

legal digital signatures to all forms of technology. The amended law, implemented in April 2002, gives digital signatures using fingerprint and voice recognition techniques, and other state-of-the-art forms of biometric technology the same legal status as those based on conventional authentication techniques. The Korea Communication Commission (KCC) is authorized to enforce digital-signature requirements, if needed, in order to secure the safety of e-commerce and protect personal property rights. The revised law also paves the way for cross border certification of digital signatures. A foreign digital signature has the same status as domestic ones if the country of its origin has an agreement with Korea for cross-recognition of digital-signature platforms. The Current Electronic Signature Act adopted major parts of the UNCITRA Model Law on Electronic Signatures (2001).

## (2) Electronic Commerce Consumer Protection Act

The Electronic Commerce Consumer Protection Act was enacted in July 2002. The purpose of this Act is to protect the interests of consumers by ensuring a fair transaction related to sales of goods and services by means of e-commerce and distant selling, and to contribute to sound national economic development by enhancing market confidence. This Act authorizes the Fair Trade Commission (FTC) to suspend business and impose fines if users of e-commerce violate fair-trade rules. Refusal to honor cancelled orders (valid if cancelled within seven days of the order date) and false advertising fall into this category of violation. The law also allows the FTC to ask users of e-commerce to set up insurance to cover repayments or compensations to customers. The first amendment of the law, enacted and implemented in March 2005, introduced an escrow system for a more secure payment method. This Act consists of 7 chapters: Chapter 1 stipulates general provisions, Chapter 2 E-Commerce and Distant Selling, Chapter 3 Consumer Protection, Chapter 4 Investigation and Supervision of FTC, Chapter 5 Corrective Measure & Surcharge, and Chapter 6 Supplementary Provisions. The Fair Trade Commission (FTC) has only recently begun to develop e-commerce consumer-protection programs. The FTC produced guidelines in January 2000 that required online shopping-mall operators to comply with the existing fair-trade rules on consumer protection. It has also established standard procedures for online shopping malls.

(3) Internet Address Resources Act

The Internet Address Resources Act, implemented in July 2004, gives the government broad power to administer Internet protocol addresses within Korea. The law establishes a centralized system of Internet-address registration and management; upholds trademark claims on the use of Internet addresses by outlawing cyber-squatting; and provides a state-appointed committee to resolve private disputes over Internet addresses. The Internet Address Resources Act paved the way for the establishment of the Internet Address Dispute Resolution Committee that offers mediation services for domain-name disputes.

(4) Copyright Act

Since its enactment in 1957, the Copyright Act has been used to protect the rights of creative work in the field of publishing, broadcasting and performance as well as its creators, and also to promote related industries, The Act, revised a number of times in line with the changing times, assumed its current form on December 28, 2006 with a total of 11 articles and 142 sections.

The Copyright Act covers not only creative works but also neighboring rights, the distribution of creative works and related industries such as online service providers and copyright management companies. The Act has now become closely related to the matters we deal with on a daily basis, for all digital matters, to the Internet, and to computer programs (software).

**Table 1.11. 2009 KISA, Korea Internet White Paper**

Name	Date of Enactment	Date of Recent Revision	Description and Revision Details	Responsible Agency
* Framework Act on Informationization Promotion	1995.8.4	2009.5.22	. Establishment and promotion of national Informationization policies . Implement national Informationization (by sector, management and utilization of knowledge information resources) . Prevent adverse effects of the spread of information (promote sound information usage and guarantee security and credibility of information) . Annual reports on the spread of information . National development based on ICT	Ministry of Public Administration and Security
* Electronic Signature Act	1999.2.5	2008.12.26	. Validity of digital signature . Certification agency, Certificates . Security and credibility of certification process	Ministry of Public Administration

			. Promote digital signature certification policies	and Security
* Basic Act on Electronic Commerce	1999.2.8	2009.5.22	. Electronic documents . Security in electronic transactions and consumer protection . Establish and implement basic e-commerce policies . Promote and establish foundation for ecommerce . Certified e-document authority system . E-commerce mediation committee	Ministry of Knowledge Economy
* Electronic Commerce Consumer Protection Act	2002.3.31	2007.7.19	-Protect the interests of consumers by ensuring a fair transaction related to sales of goods and services by means of e-commerce and distant selling, and to contribute to sound national economic development by enhancing market confidence	The Fair Trade Commission (FTC)
*Copyright Act	1957.1.28	2009.4.22	. Copyrights . Neighboring rights . Protect database producers . Exemption law on video contents . Exemption law on programs . Limitation of responsibility of online service providers . Copyright trust management business . Korea Copyright Commission . Relief on rights violations	Ministry of Culture, Sports and Tourism
*Internet Address Resources Act	2004.1.29	2009.6.9	. Promote Internet address related policies . Usage and management of Internet addresses . Internet address Dispute Resolution Committee	Korea Communications Commission
*Electronic Financial Transactions Act	2006.4.28	2008.12.31	. Rights and Duties of Parties to Electronic Financial Transaction . Securing of Safety of Electronic Financial Transactions and Protection of Users . Permission, Registration and Functions of Electronic Financial Business . Supervision of Electronic Financial Business	Financial Services Commission
Act on Promotion of Information and Communication Network Utilization and Information Protection, etc	1999.2.8	2009.4.22	. Promote use of ICT network . Utilize e-documents through e-documents broker . Protection of personal information . Protection of ICT network users . Secure security of networks	Korea Communications Commission/ Ministry of Public Administration and Security
Software Industry Promotion Act	2000.1.21	2009.5.22	. Establish foundation for software industry . Promote software Financial Corporative . Software Business Dispute Resolution Commission	Ministry of Knowledge Economy
Information and Communications Infrastructures Protection Act	2001.1.26	2009.5.22	. Protection mechanism of major ICT infrastructure . Designation and weakness analysis of major ICT infrastructure . Protection and incident management of major ICT infrastructure . Technical support and joint partnership with private sector	Ministry of Public Administration and Security
Online Digital Contents Industry Promotion Act	2002.1.14	2009.5.22	. Promote online digital contents industry development . Establish foundation for online contents industry . Protect online contents producers	Ministry of Culture, Sports and Tourism

e-learning industry Promotion Act	2004.1.29	2009.5.22	. Promote e-learning industry development . Establish foundation for e-learning industry . Stimulate e-learning industry	Ministry of Knowledge Economy
Internet Multimedia Broadcasting Business Act	2008.1.17	2009.5.21	. Approval of business . Securing and accelerating fair competition . Internet multimedia broadcasting contents	Korea Communications Commission
Act on the Establishment and Operation of the Korea Communications Commission	2008.2.29	2009.5.22	. Establishment of the Korea Communications Commission . Obligation and operation of the Commission . Korea Communications Standards Commission	Korea Communications Commission
IT Industry Promotion Act	2009.5.22	-	. Promotion of IT industry (establish, implement IT industry promotion plan, promotion of ICT, stimulate IT standardization and certification, establish foundation for IT industry promotion, Supportive measures for IT companies, National IT industry Promotion Agency) . Nurture knowledge information security industry . ICT Promotion Fund	Ministry of Knowledge Economy

#### (5) Details of Consumer Protection-related Laws

##### 1) Names of consumer protection-related laws (acts) that are applied to e-commerce

Consumer Protection Act on Electronic Transaction, enacted by law no. 6687, March 30, 2002 and revised on August 3, 2007.

##### 2) Outline of the above-mentioned laws

<Prior to the conclusion of a contract>

The specific contents of regulations regarding advertisements or representation on the Internet or by emails (e.g. the ban on misleading or deceptive representation, required items to be described in the advertisements) and sanctions or other measures for those who violate the above-mentioned regulations.

A. Art. 13(1) In advertisements on the internet the seller should include the trade name and name of the representing director, address, phone number and other information identifying the seller.

B. Art13.(2) In order to help consumers to understand the terms of transaction before signing a contract, the seller should notify the information on supplier and seller, name and contents of goods, price and payment method, time of delivery and other terms of transaction.

C. Art. 10 (Duty of representation by a seller operating a cybermall).

D. Art. 21 (Prohibitions of misleading or deceptive representation)

- E. Art. 28. To maintain fair trade and protect consumer damage FTC may disclose all information related to violation of the law in public.
- F. Art. 31. Corrective Measure; Art. 34. Surcharge; Art. 40 Penalty Provision; Art. 44 Punishment; Art. 45 Fine for Negligence

<At the time of the conclusion of a contract>

Effects or validity of contracts in cases where consumers make errors in inputting or operating when agreeing upon the contracts online (e.g. availability of asserting invalidity or rescission of such contracts due to mistakes).

- A. In general the Code of Civil Law Art.109 applies to this case.
- B. Art. 7. To prevent any damage arising from consumer mistakes, the cybermall operator should set up the procedure necessary to confirm and correct the content of the contract before the time of making an offer or imposing payment.
- C. Art.14 (confirmation of offer) The seller should set up the procedure whereby the consumer confirms or cancels the offer before signing the contract.
- D. Art.13 (3) In a contract with a minor, the seller should notify that the minor or his parents may cancel the contract when he does not receive parental permission.

<Availability of cooling-off system and its contents>

Art. 17 (1). A consumer can withdraw the offer within 7 days of the day the written documents of the contract were delivered to him.

<Contract detail (coverage)>

The contents of regulations regarding unfair contractual terms (including the limitations of clauses which exempt businesses from their liabilities).

- A. Art.35 of the Consumer Protection Act on e-commerce. Any contract which violates Art.17 (withdrawal of agreement) and Art.19 (Restriction of amount for damage compensation) is unfavorable to the consumer and shall be null and void.
- B. Act on Regulation of Unfair Contract Term (2008) Art. 6-11 may apply to this case. Art. 6 Unfair trade terms shall be null and void when they are against the

principle of good faith. Art.7 The clause that exempts business from their liabilities is null and void.

#### <Performance of a Contract>

The contents of regulations regarding the quality or the safety of goods and services (except for general regulations under civil code or contract laws)

Art.17 (3) When the content of goods is different from those of labeling and advertisement, the consumer can withdraw the offer within 3 months of receiving the goods or within 30 days of them knowing or being able to know the fact.

#### <Exceptions>

Exceptions or special provisions intended to protect consumers relating to consumers' right to claim compensation for damage in the event of businesses' default of its obligations (such as change of burden of proof, presumption of the amount of damage, increased care duty of businesses).

- A. (Restriction of the amount for compensation) Art.19. When a contract was withdrawn due to the fault of the consumer, the amount for damage compensation the seller may claim shall exceed the amount the concerned law or the standards for the amount of compensation FTC set up.
- B. (Burden of Proof) Art. 17(5). If there is any dispute between parties regarding the period of contract, supply of goods or the question as to whether a consumer has any responsibility over damage of goods, the distance seller should take a burden of proof.

#### <Dispute Resolution>

Applicable legal remedies for consumers such as lawsuits, arbitration and mediation.

- A. NIPA established the Electronic Commerce Mediation Committee (ECMC) which provides mediation services under Art. 32 of the Basic Act on Electronic Commerce
- B. Korea Consumer Agency (KCA) established the Consumer Dispute Settlement Commission which provides ADR service under Art. 60 of the Basic Act on

## Consumer

- C. The Fair Trade Commission (FTC) provides corrective measures, surcharge or warning under the Consumer Protection Act on Electronic Commerce
- D. The Personal Information Dispute Mediation Committee which provides mediation services under Art. 33 of the Act on Promotion of the Information and Communications Network Utilization & Information Protection
- E. Internet Address Resources Act, Art 16.

### <Dispute Resolution Continued>

Availability and contents of class action lawsuits or any other systems established in order to protect consumers

### Basic Act on Consumer

Art. 68 provides the collective ADR service.

Art. 68 (3) The Settlement Commission may receive a request from the consumer or enterpriser, other than the body involved in the collective ADR, to be included in that collective dispute resolution.

Art. 68 (5) The Settlement Commission may, if the enterpriser accepts the contents of the collective dispute resolution by the Settlement Commission, recommend a compensation plan to be drawn up for the victimized consumer.

### <Other Issues>

Contents and the effect of regulations on businesses (especially the effect to be produced in the case of the violation of such regulations by businesses) if there are regulations other than those described above

Art. 67 of the Basic Act on Consumer provides: "If the parties accept or are considered to have accepted the dispute settlement, the contents of the dispute settlement shall have the same effect as a judicial compromise." (legally binding)

### <Other Issues Continued>

Contents of consumers' rights or interests to be protected and the requirements for protection of these rights and interests other than those described above.



- A. The Consumer Protection Act on e-commerce, Art. 24 allows FTC to ask e-commerce business to set up insurance to cover repayments or compensations to customers
- B. Art. 13 introduced the escrow system for a more secure payment method.

### 3) Protection of Consumer (Personal) Information

#### <Names of Laws (Acts) Regarding Personal Information Protection>

Names of laws (acts) regarding personal information protection, not only comprehensive personal information protection laws, but also the relevant laws that have provisions regarding personal information protection applicable to e-commerce

- A. (Private Sector) Act on Promotion of Information and Communication Network Utilization and Information Protection (1998, 2009)
- B. (Public Sector) Act on Protection of Personal Information maintained by Public Agencies (1994, 2008)
- C. Act on Consumer Protection in Electronic Commerce (2002, 2007)
- D. Basic Act on Electronic Commerce (1999, 2009)
- E. Electronic Signature Act (1999, 2008)
- F. Internet Address Resources Act. Art 15, 23.

#### <Contents of Regulations Regarding Personal Information>

Contents of regulations regarding obtaining, keeping (retaining), handling, using and disclosing personal information applicable to businesses who handle personal information, also about the effects of sanctions in cases where businesses violate the above-mentioned regulations.

- A. Art. 1 The purpose of this Act is to promote the utilization of information and communications networks, to protect the personal information of users utilizing information and communications services, and to build a safe and sound environment for the information and communications networks in order to improve the citizen's lives and enhance the public welfare.  
 Art. 22. This Act requires providers of online information to obtain users' approval before collecting and using their personal information.  
 Art.50. It also provides penalties under existing and planned anti-spam

providers.

Art. 70-76. The law provides criminal penalties against violations with a maximum five years in prison or 50m won in fines (US 50,000 dollars).

- B. Art. 1. The purpose of this Act is to secure the proper execution of public affairs and to further protect the rights and benefits of all citizens by the establishment of necessary guidelines concerning the protection of private information managed by computers of public agencies.

Art.4. A public agency shall not collect private information that may noticeably infringe upon the fundamental personal rights of a person.

Art. 10. (Restrictions on Use) The agency shall not use for purposes other than those of the original possession of the private information file.

Art. 11. (Duties of Person Handling Private Information) An employee or former employee whose duties were the managing of private information or a person consigned by a public agency who has or has been devoted to the operations of managed information, may not leak, manage or tender the information for use by any other person or for improper purposes.

Art. 23 (Penal Provisions) Any person who erases or alters private information for the purpose of disrupting the operations of private information shall be punished by imprisonment for not more than ten years.

#### <Contents of the Rights of an Individual>

Contents of the rights belonging to an individual who is an original owner of the personal information.

- A. Art. 30 (Rights of Users) Every user may withdraw his approval given to the provider of the information and communications services.

Art. 32 (Indemnification) When a user suffers any damage by the act of the provider of information and communications services, such user may claim the compensation for such damage against the provider of information and communications services.

- B. Art. 12 (Right to Inspection of Information) The original owner of information may request in writing the inspection of the managed information concerning himself to the agency.

Art. 14 (Correction of Managed Information) The original owner of information who inspected the managed information regarding himself under Article 12, may make a written request to the public agency to correct the managed information.

<Protection of Business Information>

Names of the Laws regarding the protection of the information of businesses (business operators)

- A. Copyright Act (1957, 2009)-to protect copyrights and database producers
- B. Online Digital Contents Industry Promotion Act (2002, 2009)- to protect online contents producers
- C. Internet Address Resources Act (2003, 2009)-to promote internet address related policy and protect business name on the internet
- D. Software Industry Promotion Act (2000, 2009)-to promote software industry

<Possibility for a Third Party to Disclose the Information of Businesses>

Possibility for a third party (especially, public or private complaint handling or dispute resolution organizations) to disclose the information of businesses (business operators), names and contents of the regulations regarding such disclosure.

- A. Act on the Protection of Personal Information maintained by Public Agencies.

Art. 10 (Restrictions on Use and its Tender of Managed Information) The public agency in possession shall not use or tender to another agency managed information for purposes other than those of the original possession of the private information file.

- B. Act on Promotion of the Information and Communications Network Utilization & Information Protection

Art. 24 (Utilization and Provision of Personal Information) No provider of information and communications services, with the exception of the consent of the relevant party, shall utilize the personal information or provide it to any third person.

Art 28-2 (Prohibition against Disclosure of Personal Information)

Art. 66 (Confidentiality) Any person who is or was engaged in the following business shall not leak private and confidential information that he has learned

while performing his duties.

4) Permission or License that e-Commerce Businesses Must Obtain

Requirements for e-commerce businesses when they open online shops or set up their websites: approval, permission or license from, to register with, or to submit notification to the competent authority

A. Consumer Protection Act on Electronic Transaction,

Art. 12 (Notification of Distant Seller)

A distant seller shall notify each of the following set by the Presidential Decree to the Fair Trade Commission or the Mayor/Province Governor. However, this shall not apply to the case of the distant-seller prescribed by the Presidential Decree, such as small-scale distant-seller.

- (i) Trade name (in the case of a corporation, the name and ID number of the representing director shall be included), address and phone number
- (ii) E-mail address, the Internet domain and host server address
- (iii) Other necessary elements for confirming identification of the businessman prescribed by the Presidential Decree.

B. Art. 42 (Penalty Provision)

Any person who fails to submit notification or files a false report shall be subject to a fine not exceeding thirty million won.

## **1.5. Philippines**

### *1.5.1. E-commerce Market*

It is quite difficult to pinpoint when e-commerce really started in the Philippines. However, records show that internet banking started in 1997 when Urban Bank launched its Home Virtual Banking service. A year later, the first full e-commerce site from the Philippines started its operation selling San Miguel Draft beer, an internationally known brand of beer, online. This was a private sector initiative which had the support of the Department of Trade and Industry (DTI) through the Electronic Commerce Promotion Council (ECPC) of the Philippines. It showed the capability of the Philippines to facilitate internet commerce. This was followed by the burgeoning of auction sites in 1999, following the trend in the United States.

Recognizing the potential of e-commerce in the country, the Philippine Internet Commerce Society (PICS) and the DTI pushed for the enactment of a law on e-commerce. What is notable is that the private sector group that initiated this crusade was a multi-sectoral organization which is made up of individuals of various interests. It simply showed that e-commerce can be applied in various ways.

The Electronic Commerce Act of 2000 is a significant piece of legislation that facilitated the implementation of electronic commerce in the country. B2B business exchanges started operating to offer services for corporate buyers and sellers. These allowed companies to increase efficiency by bidding and procuring online.

The most notable outcome of the enactment of the E-Commerce Act was the blossoming of the ICT services sector. What used to be a US\$1.3 billion industry in 2004 in terms of revenue is estimated to have earned US\$ 7.3 billion in 2009, and is projected to grow further and earn US\$12 billion by 2011. From a mere 101,000 full time employees in 2004, 446,000 individuals were employed full time by the sector last year. From a few call centers and software development companies, the IT Business Process Outsourcing (IT-BPO) sector is now offering a wide range of services that includes voice services (customer interaction and support, telemarketing, advisory), non-voice services (e.g. financial accounting outsourcing, human resource outsourcing, legal process outsourcing, medical transcription, legal transcription, research and analytics, supply management, procurement, industry-specific services), IT

outsourcing/engineering service outsourcing, and creative process outsourcing (animation, game development). In October 2009, Global Services/Tholons cited the Philippines as the number 2 Offshore Nation in the world next to India. In November 2009, the National Outsourcing Association of the United Kingdom alluded to the Philippines as the Best Offshoring Destination of the Year.

While B2B e-commerce prospered, B2C e-commerce left a lot to be desired even after the passage of the e-commerce act. Many small and medium businesses attempted to sell their products online but many of them just opted to shut down their sites due to lack of affordable and accessible payment facilities. Those who persisted availed themselves of the services of foreign payment gateways despite the stiff and unattractive terms. Most of the online businesses that survived heavily relied on Filipino migrants and overseas Filipino workers as their main market. Realizing that there is a market for electronic payment services because of the increasing number of businesses going online, local e-payment providers came into the picture. Even start-up companies now have a better chance of putting their businesses online with the existence of the local e-payment service providers. B2C e-commerce is growing and yet the percentage of local Filipino consumers who purchase online is still relatively low.

The Filipinos have gone a long way in using the powerful tool known as the internet. As of September 2009, the number of internet users reached 24,000,000 with an internet penetration rate of 24.5%. However, a survey conducted by Yahoo-Nielson covering internet users aged 10 years and above across all socio economic classes in urban areas in the country (refer to the chart below) showed that only 3% of people who used the internet actually purchased products online. More than 50% of the respondents used the internet for e-mail, instant messaging, search, online games, and social networking. These numbers are expected to increase because online businesses seem to be upbeat these days. Even individuals are now trying to do business online although many of them do not maintain their own websites but sign-up with existing websites for the purpose of marketing their products. Even social networking sites are being used for business these days.

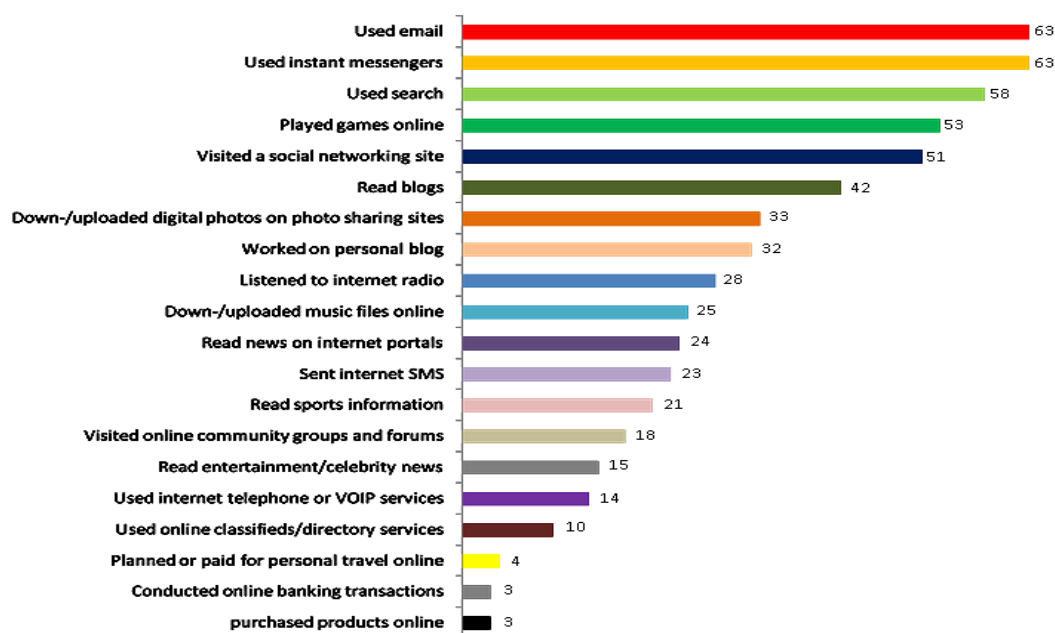
**Table 1.12. ICT at a Glance**

No. of internet users (as of Sept. 2009)	24,000,000
Internet penetration rate (as of Sept. 2009)	24.5%
No. of broadband subscribers (2008)	1,045,700
Broadband penetration rate (2008)	1.16%
No. of fixed telephone lines (2008)	4,076,100
Fixed telephone lines density (2008)	4.51
No. of mobile cellular subscribers (2008)	68,117,200
Mobile cellular phone density (2008)	75.39%
% of mobile cellular phone subscribers to total telephone subscribers	94.4%
Total no. of telephone subscribers (2008)	72,193.3
Telephone density (2008)	79.91%

*Note:* Broadband and phone data: International Telecommunications Union (ITU).

*Source:* Internet data: Internet World Stats.

**Figure 1.16. E-Commerce in the Philippines**



*Note:* Internet users aged 10+ across all socio-economic classes in National Urban Philippines.

*Source:* Yahoo!-Nielsen Net Index 2008.

There's a dearth of official statistics on e-commerce in the country particularly at the household level. For data related to business, the second and latest survey conducted

by the National Statistics Office is the 2008 Survey on Information and Communication Technology (SICT), a rider to the 2008 Annual Survey of Philippine Business and Industry (ASPBI) conducted in April 2009. Preliminary results of the study revealed that nearly one-third of the establishments surveyed benefited from e-commerce in 2008. E-commerce transactions conducted by these establishments included receiving orders, placing orders, or both receiving and placing orders over computer network channels. However, more establishments placed orders than received orders through network channels.

There is an ongoing project on the ASEAN E-commerce Database which is funded by the ASEAN ICT Center. This is a project of the ASEAN TELSOM Working Group on E-Commerce and ICT Trade Facilitation which was proposed by the Philippines. The DTI of the Philippines is the implementing Agency for this project. A consultancy firm is currently working on the project and this will cover both primary and secondary data. One of the outputs of the project is a comparative study of the e-commerce behavior within ASEAN. There are high expectations for the project because this will provide baseline data on e-commerce within ASEAN.

#### *1.5.2. Legal Systems Related to e-Commerce*

E-commerce provides a new way of doing things for people all around the world but it requires a new set of legal and regulatory framework. In order to take advantage of the opportunities that e-commerce brings, the Philippine government enacted and issued the following laws and regulations:

- (1) Republic Act (RA) No. 8792 or the Electronic Commerce Act of 2000 (14 June 2000)

The passage of the E-commerce Act was the first step taken by the government to establish a secure legal framework for electronic commerce in the Philippines. The law is aligned with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on E-Commerce. Singapore's Electronic Transactions Act (ETA) was also used as a reference when the bill was being drafted. The E-Commerce Act contained the declaration of policy and general provisions with respect to the implementation of electronic



commerce in the country. It likewise paved the way for the legal recognition and communication of electronic data messages and electronic documents as well as the legal recognition of electronic signatures. There are also provisions of electronic commerce in the carriage of goods. The law also provided for the use by government of electronic data messages, electronic documents and electronic signatures. Penalties were provided for certain cybercrimes as well as violations of the law itself and the Consumer Act as it relates to e-commerce transactions.

The Implementing Rules and Regulations of the E-Commerce Act were issued a month later.

(2) Bangko Sentral ng Pilipinas (BSP) Circular No. 269 (21 December 2000)

This circular issued by the country's central bank prescribed new guidelines on e-banking activities.

(3) Supreme Court Memorandum No. 01-7-01 (17 July 2001) or the Rules on Electronic Evidence

This set of rules paved the way for the admissibility of electronic data messages and electronic documents as evidence in courts. It also specified the requirements for the recognition of electronic signatures.

(4) Joint Department of Trade and Industry (DTI) – Department of Science and Technology (DOST) Administrative Order No. 2 (28 September 2001)

This administrative order provided for the implementing rules and regulations for electronic authentication and electronic signatures.

(5) Executive Order (EO) No. 40 (08 October 2001)

This order issued by the President consolidated procurement rules and procedures for all government agencies, government owned or controlled corporations and government financial institutions and required the use of the government electronic procurement system. This was the basis for the setting-up of the Philippine Government Electronic Procurement System (PhilGEPS) in our country.

- (6) EO No. 482 (27 December 2005)

Through this order, the President created the National Single Window Task Force for Cargo Clearance after the Philippines was chosen as the pilot ASEAN economy for the implementation of the National Single Window (NSW) for cargo clearance under the ASEAN Single Window (ASW). NSW is a system that enables a single submission of data and information that is synchronously processed.

- (7) BSP Circular No. 511 (03 February 2006)

This circular was issued by the BSP to prescribe guidelines on Technology Risk Management for banks engaged in e-banking activities.

- (8) DTI DAO No. 8 (21 July 2006)

This administrative order was issued by the DTI to prescribe the guidelines for the protection of personal data in ICT systems in the private sector. It was issued because of the clamor of the IT-BPO industry because of the growing concerns on data privacy as the sector is involved in cross-border flows of personal information. This is meant to be an interim measure while waiting for the enactment of a Data Privacy Law.

- (9) BSP Circular No. 542 (01 September 2006)

This circular prescribes guidelines to protect consumers engaged in electronic banking.

- (10) DTI – Department of Finance (DOF) DAO No. 2 (25 October 2006)

This joint administrative order prescribes the guidelines for electronic payment and collection systems in government pursuant to the E-Commerce Act.

- (11) National Telecommunications Commission (NTC) Circular No. 04-06-2007

This prescribes the guidelines for data log retention of telecommunications traffic.

- (12) NTC Circular No. 05-06-2007

This circular prescribes the guidelines for consumer protection in telecommunications.

- (13) Joint DTI – Department of Health (DOH) – Department of Agriculture (DA) Administrative Order No. 1 (20 October 2008)

The three departments issued this set of rules and regulations for consumer protection in transactions covered by the Consumer Act of the Philippines through Electronic Means. Since the Consumer Act was approved in 1991, there has been no reference yet to e-commerce transactions. While the underlying principle is “what is applicable to offline transactions is also applicable to online transactions,” this administrative order prescribed additional rules to protect consumers in an online environment.

- (14) DTI Department Order (DO) No. 09-16 (06 March 2009)

This was issued by the Secretary of Trade and Industry to institutionalize an e-commerce unit in DTI known as the E-Commerce Office (ECO), a special office that will focus on e-commerce-related work. The objectives are to fast-track the implementation of e-commerce in the country and participate in international cooperation initiatives to address cross border concerns on electronic commerce.

- (15) BSP Circular No. 649 (09 March 2009)

In order to enable the application of various modes of electronic payment to promote e-commerce, the BSP issued this circular to prescribe the guidelines governing the issuance of Electronic Money (e-money) and the operations of Electronic Money Issuers (EMIs) in the Philippines. One example of an application covered by this circular is electronic payment with the use of a mobile phone.

- (16) EO No. 810 (15 June 2009)

This presidential issuance institutionalized the certification scheme for digital signatures. Through this order, the President also directed the application of digital signatures in e-government services.

The preceding enumeration is not an exhaustive listing of e-commerce-related laws and issuances. It was meant to highlight the e-commerce legal system in relation to consumer protection. They are all available at the DTI website, <http://www.dti.gov.ph>, and can be directly accessed through this link, <http://www.dti.gov.ph/dti/index.php?p=627>.

A more in-depth research was conducted in order to determine the sufficiency of the existing legal systems in the Philippines in relation to the establishment of a secure and safe e-commerce market place with the ultimate view of implementing cross border consumer protection.

The following are specific concerns identified in the study and the relevant provisions in the existing legal system in the Philippines:

*A. Prior to the Conclusion of a Contract: The specific contents of regulations regarding advertisements or representation on the Internet or by emails (e.g., the ban on misleading or deceptive representation, required items to be described in the advertisements) and sanctions or other measures for those who violate the above-mentioned regulations.*

DTI-DOH-DA Joint Administrative Order No. 1, Series of 2008:

Section 4. *Requirements for Adopting Fair Marketing and Advertising Practices.* Retailers, sellers, distributors, suppliers or manufacturers engaged in electronic commerce with consumers shall refrain from engaging in any false, deceptive and misleading advertisement prohibited under the provisions of Title III, Chapter VI of the Consumer Act of the Philippines and its IRR, and shall comply with the advertising and promotion requirements therein, and other advertising and promotion guidelines issued by the respective departments in compliance with other relevant laws.

Consumer Act of the Philippines, Title III, Chapter VI:

Art. 110. *False, Deceptive or Misleading Advertisement.* It shall be unlawful for any person to disseminate or cause the dissemination of any false, deceptive, or misleading advertisement by Philippine mail or in commerce by print, radio, television, outdoor advertisement or other medium for the purpose of inducing or which is likely to induce directly or indirectly the purchase of consumer products or services.

An advertisement shall be false, deceptive or misleading if it is not in conformity with the provisions of this Act or if it is misleading in a material respect. In determining whether any advertisement is false, deceptive or misleading, there shall be taken into account, among other things, not only representations made or combinations thereof, but also the extent to which the advertisement fails to reveal material facts in the light of

such representations, or materials with respect to consequences that may result from the use or application of consumer products or services to which the advertisement relates under the conditions prescribed in the said advertisement, or under such conditions as are customary or usual.

*B. At the Time of the Conclusion of a Contract:*

- *Effects or validity of contracts in cases where consumers make errors in inputting or operating when agreeing to the contracts online (e.g. availability of asserting invalidity or rescission of such contracts due to mistakes).*
- *Availability of cooling-off system and its contents.*

Joint DTI-DOH-DA Administrative Order No. 1, Series of 2008:

Section 5. *Requirements for On-line Disclosure of Information.*

1) *Information About the Retailers, Sellers, Distributors, Suppliers or Manufacturers.*

Retailers, sellers, distributors, suppliers or manufacturers engaged in electronic commerce shall provide accurate, clear and easily accessible information to identify themselves, which includes but is not limited to the following:

- 1.1) Department of Trade and Industry (DTI) and/or Securities Exchange Commission (SEC) registration;
- 1.2) Name of the owner/proprietor of a retail establishment in the case of a single proprietorship and names of directors and other officers in the case of a corporation;
- 1.3) Principal geographical address of the retailer, seller, distributor, supplier or manufacturer, and when applicable, of offices or agents in the Philippines;
- 1.4) Website, e-mail address or other electronic means of contact, telephone and fax numbers, of the retailer, and when applicable, of its offices or agents in the Philippines;
- 1.5) Any relevant local or foreign government registration/license numbers such as but not limited to the local government unit's permit to operate, Taxpayer's Identification Number (TIN), when applicable;
- 1.6) Contact details about any business association or organization membership, when applicable;
- 1.7) Representative agent(s) in the Philippines for poses of summons.

- 2) *Information About the Products or Services.* Retailers, sellers, distributors, suppliers or manufacturers engaged in electronic commerce with consumers shall provide:
- 2.1) Fair, accurate, clear and easily accessible information describing the products or services offered for sale such as the nature, quality and quantity thereof;
  - 2.2) Fair, accurate, clear and easily accessible information sufficient to enable consumers to make an informed decision whether or not to enter into the transaction; and
  - 2.3) Such information that allows consumers to maintain an adequate record of the information about the products and services offered for sale.
- 3) *Information About Consumer Transaction.*
- 3.1) Retailers, sellers, distributors, suppliers or manufacturers engaged in electronic commerce with consumers shall provide sufficient, clear, accurate, easily accessible information about the terms, conditions and costs of the consumer transaction to enable consumers to make an informed decision.
  - 3.2) The manner of providing this information shall give consumers an adequate opportunity to review the terms, conditions and costs before entering into the consumer transaction and allow the consumers to retain a copy of the information.
  - 3.3) Retailers, sellers, distributors, suppliers or manufacturers shall make available to consumers a clear and complete text of the relevant terms and conditions of the consumer transaction. The consumers should be able to access and retain a record of the information by printing or electronic record.
  - 3.4) The information shall include the price tag of the product or service and the applicable currency. However, applicable costs not included in the price tag such as delivery, postage, handling insurance, shipping charges, taxes, and specific reference to any other charges, customs fees and other fees that may be imposed on or collected from consumers shall be so stated in the information. The information shall include notice of any optional ongoing costs, fees and charges and methods of notification for changes to those costs, fees and charges.

- 3.5) Where applicable, the following information shall be provided to consumers:
- 3.5.1) Any restrictions, limitations or conditions of purchase, such as geographic limitations or parental/guardian approval requirements for minors;
  - 3.5.2) Payment mechanisms that are reliable, easy to use and offer security that is appropriate for the transaction and details of payment terms that include:
    - 3.5.2.1) available methods of payment;
    - 3.5.2.2) the security of those payment methods in clear, simple language, so as to help consumers judge the risk in relying on these methods;
    - 3.5.2.3) how to best use the methods;
    - 3.5.2.4) how to cancel regular payments under those methods; and
    - 3.5.2.5) any costs applicable to those payment methods.
  - 3.5.3) Terms of delivery;
  - 3.5.4) Mandatory safety and health care warnings that a consumer would get at any physical/offline point of sale;
  - 3.5.5) Details and conditions about termination, return, exchange, cancellation and refunds;
  - 3.5.6) Details about any cooling-off period or right of withdrawal;
  - 3.5.7) Any conditions about contract renewal or extension;
  - 3.5.8) Details about any available warranties and guarantees;
  - 3.5.9) Details about any after-sales service; and
  - 3.5.10) Any required quality or certification standards, marks, registration or license for consumer products issued by a relevant local or foreign government.
  - 3.5.11) Where a retailer, seller, distributor, supplier or manufacturer specifies an applicable law or jurisdiction to govern any contractual disputes or a jurisdiction or forum where disputes must be determined, it shall clearly and conspicuously state that information at the earliest possible stage of the consumer's interaction with the retailer, seller, distributor, supplier or manufacturer.

## Section 6. *Conclusion of Consumer Transaction*

- 1) Where appropriate, before concluding the purchase, retailers, sellers, distributors, suppliers or manufacturers shall provide, by procedures, consumers the opportunity to:
  - 1.1) Review and accept or reject the terms and conditions of the contract;
  - 1.2) Identify precisely the product or service consumers wish to purchase or avail;
  - 1.3) Identify and correct any errors or modify the order; and
  - 1.4) Retain a record of any purchase/order, transaction confirmation, acceptance of any offer they make.
- 2) Retailers should promptly acknowledge the receipt of any order, confirmation or acceptance received.

### *C. Contract Detail (Coverage):*

- *The contents of regulations regarding unfair contractual terms (including the limitations of clauses which exempt business from their liabilities).*

### Consumer Act of the Philippines:

Art. 104. *Ignorance of Quality Imperfection.* The supplier's ignorance of the quality imperfections due to inadequacy of the products and services does not exempt him from any liability.

Art. 105. *Legal Guarantee of Adequacy.* The legal guarantee of product or service adequacy does not require an express instrument or contractual exoneration of the supplier being forbidden.

Art. 106. *Prohibition in Contractual Stipulation.* The stipulation in a contract of a clause preventing, exonerating or reducing the obligation to indemnify for damages effected, as provided for in this and in the preceding Articles, is hereby prohibited. If there is more than one person responsible for the cause of the damage, they shall be jointly liable for the redress established in the pertinent provisions of this Act. However, if the damage is caused by a component or part incorporated in the product or service, its manufacturer, builder or importer and the person who incorporated the component or part are jointly liable.



*D. Performance of a Contract:*

- *The contents or regulations regarding the quality of the safety of goods and services (except for general regulations under civil code or contract laws).*
- *If there are any exceptions or special provisions intended to protect consumers relating to consumers' right to claim compensation for damage in the event of businesses' default of its obligations (such as change of burden of proof, presumption of the amount of damage, increased care duty of businesses, and so forth).*

Department of Trade and Industry (DTI) Department Administrative Order No. 2, Series of 1993 (Implementing Rules and Regulations of Republic Act No. 7394 or the Consumer Act of the Philippines):

*Rule V. Notification Requirement for Product Quality and Quantity Imperfections*

Section 1. *Notification* - The consumer shall notify the supplier of the imperfection in the quality and/or quantity of the product or service immediately upon discovery which shall be within a reasonable period that the product is expected to have been used and the imperfect nature thereof known by the consumer.

Such notice shall not be considered complied with unless the supplier or its representative has been given the opportunity to actually inspect and verify the imperfection. However, in case where the supplier unreasonably delays the inspection, the mere notification by the consumer shall be deemed sufficient compliance with this Rule.

However, the consumer may make immediate use of the remedies under the immediately preceding section without need of notice to the supplier, when, by virtue of the extent or nature of the imperfection, the replacement of the imperfect parts may jeopardize the product quality or characteristics which shall result in a decrease in the value of the product.

Section 2. *Time Within Which to Correct Imperfection* - Suppliers to whom notification has been given pursuant to the immediately preceding section shall have thirty (30) days from notification within which to correct a product imperfection. However, if the nature of the product imperfection cannot be corrected within the thirty (30) day period allowed by this Section, it may be extended for a reasonable length of

time subject to the written consent of the consumer.

Section 3. *Reduction or Increase of Time to Correct Imperfection* - The parties in the sale agreement of a consumer product may agree to reduce or increase the term specified in the immediately preceding section but such term shall not be less than seven (7) days nor more than one hundred and eighty (180) days.

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*Rule IX. Proof Required to Avail of Remedies*

Section 1. In order to avail of the remedies provided under this Chapter, the consumer shall be able to show proof that the product or service was supplied by the manufacturer, builder, producer, importer or supplier, as the case may be.

*Rule X. Ignorance of Quality Imperfection*

Section 1. The supplier's ignorance of the quality imperfections due to inadequacy of the products and services does not exempt from any liability.

*Rule XI. Prohibition in Contractual Stipulation*

Section 1. Except as otherwise provided in these Rules, any stipulation in a contract of a clause preventing, exonerating or reducing the obligation to indemnify for damages for product and service defects is hereby prohibited.

*Rule XII. Legal Guarantee of Adequacy*

Section 1. The absence of a stipulation on the legal guarantee of product and service adequacy or the prohibition on the contractual exonerated of the supplier does not negate such guarantee.

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*Rule II. Prohibition Against Deceptive Sales Acts and Practices*

Section 5. *Change in the Supply of Products Sold* - Should there be a change in the supply of a certain product such that it can no longer be supplied to the extent promised, information of the same shall immediately be made to the buyer. In such case, the rights and remedies of both parties shall be governed by the pertinent provisions of the Civil Code.

Section 6. *Stipulation of Waiver of Rights or Remedies by Buyer* - No seller, supplier, producer, manufacturer or importer of a consumer product or owner or operator of a

consumer service firm shall provide for waiver by the buyer of any of his rights and remedies under the law without first informing him that such rights and/or remedies are available to him.

Section 7. *Prohibition on the use of the Words “No Return, No Exchange”* - The words “No return, no exchange,” or words to such effect, shall not be written into the contract of sale, receipt in a sales transaction, in any document evidencing such sale or anywhere in a store or business establishment.

Consumer Act of the Philippines:

Art. 164. *Sanctions.* - After investigation, any of the following administrative penalties may be imposed even if not prayed for in the complaint:

- (a) The issuance of a cease and desist order, Provided, however, that such order shall specify the acts that the respondent shall cease and desist from and shall require him to submit a report of compliance therewith within a reasonable time;
- (b) The acceptance of a voluntary assurance of compliance or discontinuance from the respondent that may include any or all of the following terms and conditions:
  - (1) an assurance to comply with the provision of the Act and its implementing rules and regulations;
  - (2) an assurance to refrain from engaging in unlawful acts and practices or unfair or unethical trade practices subject of the formal investigation;
  - (3) an assurance to comply with the terms and conditions specified in the consumer transaction subject of the complaint;
  - (4) an assurance to recall, replace, repair, or refund the money value of defective products distributed in commerce;
  - (5) an assurance to reimburse the complaint out of any money or property in connection with the complaint, including expenses in making or pursuing the complaint, if any, and to file a bond to guarantee compliance therewith.
- (c) Restitution or rescission of the contract without damages;
- (d) Condemnation and seizure of the consumer product found to be hazardous to health and safety unless the respondent files a bond to answer for any damage or injury that may arise from the continued use of the product;
- (e) The imposition of administrative fines in such amount as deemed reasonable by the

Secretary.

*E. Dispute Resolution:*

- *Applicable legal remedies for consumers such as lawsuits, arbitration and mediation.*
- *Availability and contents of class action lawsuits or any other systems established in order to protect consumers.*

Joint DTI-DOH-DA Administrative Order No.1, Series of 2008:

Section 9. *Addressing Consumer Complaints.*

(1) *Setting Up of Internal Complaint-Handling Mechanism.*

Retailers, sellers, distributors, suppliers, or manufacturers shall set up and make operational an internal complaint-handling mechanism for consumer complaints within a maximum period of three (3) months but the mechanism should not prejudice the rights of the consumers to seek legal address.

(2) *Procedure for filing a complaint within concerned implementing agencies.*

(Details are found in the Joint Administrative Order which is available on the DTI website, <http://www.dti.gov.ph>.)

The above procedure shall be supplemented by DTI-DOH-DA Joint Administrative Order (JAO) No. 1, Series of 1993 or “Rules and Regulations Implementing the Provisions of Chapter III Title V of Republic Act No. 7394 Otherwise Known as the Consumer Act of the Philippines” and other existing rules. However, for complaints filed with the DTI under JAO 1, Series of 1997, the procedure shall be supplemented by the Department Administrative Order No. 7, Series of 2006 or “Instituting the Simplified and Uniform Rules of Procedures for Administrative Cases Filed with the Department of Trade and Industry (DTI) for Violation of the Consumer Act of the Philippines and Other Trade and Industry Laws” and Department Administrative Order No. 5, Series of 2007 or “Rules on Mediation in the Resolution of Inquiries, Complaints and/or Cases Filed with the Department of Trade and Industry (DTI) for Violations of the Consumer Act of the Philippines and Other Trade and Industry Laws Supplementing Department Administrative Order No. 7, Series of 2006”, on Alternative Dispute Resolution.

Any consumer located in the Philippines aggrieved by any consumer transaction through electronic means through a retailer, seller, distributor, supplier or manufacturer from another country may file his complaint in the Philippine trade/consular office/embassy therein or directly in the foreign government agency or regulator of the country where the retailer, seller, distributor, supplier or manufacturer is located with the assistance of the Philippine government agency concerned. The Philippine trade/consular office/embassy may refer to and coordinate with the foreign government agency or regulator of the country where the retailer, seller, distributor, supplier or manufacturer is located. Upon request of the Philippine government agency concerned, the Philippine trade/consular office/embassy may provide information on the result or development of the referral and coordination of the said complaint.

Department Administrative Order No. 07, Series of 2006

Rule 1, Section 3. *Applicability of the Revised Rules of Court.* –

(a) Subject to the requirement of due process, the technical rules of evidence (Part IV of the Revised Rules of Court) prevailing in the courts of law shall not be strictly applied hereto.

(b) In the absence of any applicable provision in these Rules, the pertinent provisions of the Revised Rules of Court shall apply suppletorily.

Rule X, Section 1. *Statement of Policy.* – In applying and implementing the provisions of these Rules, primary consideration must be given to the need to promote candor of parties and the Adjudication Officer through the policy of fostering prompt, economical and amicable resolution of disputes in accordance with the principles of integrity of determination by the parties, and the policy that the decision making authority in the mediation process rests with the parties, pursuant to R.A. No. 9285 or the Alternative Dispute Resolution Act of 2004.

Section 2. *Mediation.* – Within five (5) days from the filing of the answer, or from the lapse of the period to answer if none has been filed, the Adjudication Officer shall issue a notice of mediation, which shall be served upon each of the parties concerned at least five (5) days before the holding thereof. During mediation, the Adjudication Officer shall:

a. Explain to all parties the nature of the action;

- b. Clarify from the parties the relief/s sought;
  - c. Encourage the parties to settle the case, and ask for the parties' offers and counter offers;
  - d. In all cases, endeavor to facilitate the amicable settlement by the parties, by stressing the advantage thereof, e.g., cost-effective, peace of mind and relief;
  - e. Propose to the parties alternative solutions and encourage counter-offers; and
  - f. Resort to such other means toward the speedy and impartial disposition of the case.
- A successful mediation shall operate as a dismissal with prejudice of the case and is immediately final and executory.

Section 3. *Compromise and Execution During Mediation.* – During the mediation stage, if the parties agree to an amicable settlement of the case, they shall sign an agreement indicating the terms and conditions thereof. The agreement shall not be contrary to law, morals, good customs, public order or public policy. The Adjudication Officer shall render a decision based on the compromise agreement, which shall immediately be final and executory.

Republic Act No. 9285 or the “Alternative Dispute Resolution Act of 2004”

Sec. 2. *Declaration of Policy.* – It is hereby declared the policy of the State actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide the means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time.

Sec. 18. *Referral of Dispute to other ADR Forms.* – The parties may agree to refer to one or more or all issues arising in a dispute or during its pendency to other forms of

ADR such as but not limited to (a) the evaluation of a third person or (b) a mini-trial, (c) mediation-arbitration, or a combination thereof.

Sec. 19. *Adoption of the Model Law on International Commercial Arbitration.* – International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the “Model Law”) adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended as approved on December 11, 1985.

Sec. 20. *Interpretation of Model Law.* – In interpreting the Model Law, regard shall be given to its international origin and to the need for uniformity in its interpretation and resort may be made to the travaux préparatoires and the report of the Secretary General of the United States Commission on International Trade Law dated March 25, 1985 entitled, “International Commercial Arbitration: Analytical Commentary on Draft Trade identified by reference number A/CN. 9/264.”

Sec. 21. *Commercial Arbitration.* – An arbitration is “commercial” if it covers matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a transaction: any trade transaction for the supply or exchange of goods or services, distribution agreements; construction of works; commercial representation or agency; factoring; leasing, consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

Implementing Rules and Regulations of Republic Act No. 8792 or the E-Commerce Act of 2000:

Section 3 (m) Dispute Mechanisms – Government encourages the use of self-regulatory extra-judicial dispute settlement mechanisms such as arbitration and mediation as an effective way of resolving electronic commerce disputes.

Rules of Court, Rule 3:

Section 12. Class Suit. – When the subject matter of the controversy is one of a common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. But in such case the court shall make sure that the parties actually

before it are sufficiently numerous and representative so that all interests concerned are fully protected. Any party of interest shall have the right to intervene in the protection of his individual interest.

*F. Other Issues:*

- *Contents and the effect of regulations on businesses (especially the effect to be brought in the case of the violation of such regulations by businesses) if there are other regulations than those described above.*
- *Contents of consumers' rights or interests to be protected and the requirements for protection of these rights and interests if there are rights or interests other than those described above.*

Art. 167. Relation to the Act of Other Rights. The provisions of the Act shall apply notwithstanding any agreement to the contrary but shall not restrict, limit or derogate from any other rights or remedies of a consumer under any other law.

*G. Protection of Consumer (Personal) Information and Business Information:*

*Electronic Commerce Act of 2000:*

Sec. 31. *Lawful Access.* – Access to an electronic file, or an electronic signature of an electronic data message or electronic document shall only be authorized and enforced in favor of the individual or entity having a legal right to the possession or the use of the plaintext, electronic signature or file and solely for the authorized purposes. The electronic key for identity or integrity shall not be made available to any person or party without the consent of the individual or entity in lawful possession of that electronic key.

Sec. 32. *Obligation of Confidentiality.* – Except for the purposes authorized under this Act, any person who obtained access to any electronic key, electronic data message, or electronic document, book, register, correspondence, information, or other material pursuant to any powers conferred under this Act, shall not convey to or share the same with any other person.

DTI Department Administrative Order No. 08, Series of 2006 “Prescribing Guidelines for the Protection of Personal Data in Information and Communications System in the Private Sector:



Section 2. *Objective and Sphere of Application*

- 2.1 These “Guidelines” are intended to encourage and provide support to private entities to adopt privacy policies for the protection of personal data in information and communications system in the private sector.
- 2.2 The “Guidelines” prescribe the rules governing data protection certifiers. As business organizations, data protection certifiers are encouraged to formulate, establish and implement unique types of certifications for each industry sector with a view to supporting and promoting various types of privacy programs.
- 2.3 The “Guidelines” likewise apply to the processing of all types of personal data whether such data refers to any natural or legal person, and without regard to whether or not that personal data is of local origin or from foreign countries.

Section 6. *Lawful Access to Personal Data in an Information and Communications System.* – Access to personal data in an information and communications system shall only be authorized in favor of the individual or entity having a legal right to the possession or the use of the file and solely for the authorized purposes. It shall not be made available to any person or party without the consent of the individual or entity in lawful possession, or in the absence of a court order.

Section 7. *Obligation of Confidentiality.* – Except for the purposes authorized under these “Guidelines”, any person who obtained access to personal data in an information and communications system pursuant to any power conferred under the E-Commerce Law, shall not convey to or share the same with any other person.

Section 9. *Privacy Complaints Mechanism*

- 9.1. The purpose of the section is to provide a one-stop-shop for complainants, whether based here in the Philippines or situated abroad, to report complaints related to personal data privacy violations under these guidelines. The DTI Accreditation Office shall establish a Privacy Complaints Office and designate a Privacy Complaints officer. The Privacy Complaints Office shall act as a central repository of complaints related to any privacy violations committed by private entities under this “Guidelines”.
- 9.2. Within three (3) days from receipt of any complaint, the DTI Accreditation Office shall forward the complaint to the relevant government agency/ies concerned.

The DTI Accreditation Office Privacy Complaints Office shall also provide assistance to complainants to enable them to file their complaints before the proper venue.

Alternative Dispute Resolution Act of 2004:

Sec. 9. *Confidentiality of Information.* – Information obtained through mediation proceedings shall be subject to the following principles and guidelines:

- (a) Information obtained through mediation shall be privileged and confidential.
- (b) A party, a mediator, or a nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication.
- (c) Confidential Information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi-judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation.
- (d) In such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during mediation: (1) the parties to the dispute; (2) the mediator or mediators; (3) the counsel for the parties; (4) the nonparty participants; (5) any persons hired or engaged in connection with the mediation as secretary, stenographer, clerk, or assistant; and (6) any other person who obtains or possesses confidential information by reason of his/her profession.
- (e) The protection of this Act shall continue to apply even if a mediator is found to have failed to act impartially.
- (f) A mediator may not be called to testify to provide information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his attorney's fees and related expenses.

*H. Special Regulations about E-Commerce:*

Presently, there are no regulations in the Philippines that require e-commerce businesses to obtain approval, permission or license from, to register with, or to submit notification to the competent authority when they open online shops or set their websites. However, the Implementing Rules and Regulations of the E-Commerce Act

provides that the DTI shall establish a voluntary listing system for all businesses or entities involved in electronic commerce including, but not limited to, value-added service (VAS) providers as the term is understood in Republic Act No. 7925 (Public Telecommunications Policy Act), banks, financial institutions, manufacturing companies, retailers, wholesalers, and on-line exchanges. The list of electronic commerce entities shall be maintained by the DTI and made available electronically to all interested parties.

### *1.5.3. Efforts to Build Confidence in E-Commerce*

Majority of Filipinos still do not have the confidence to purchase online basically due to lack of trust. They do not want to run the risk of ordering and paying online only to be faced with the issue of non-delivery of items purchased. A number of consumers do not want to use their credit cards because they do not want to be subjected to credit card fraud. Others do not even have a credit card which is still the most acceptable form of payment for online transactions. However, with the introduction of new payment schemes for e-commerce, such as debit cards, cash cards, and payment through mobile phone, people engaged in e-commerce business and e-commerce service providers are optimistic that e-commerce will gather a lot of speed. New regulations introduced by the government, as well as private initiatives, are meant to establish a safe and secure e-commerce marketplace in the Philippines.

E-commerce in the Philippines is private sector-led and those engaged in e-business are up to speed in terms of technological developments to make their systems more secure so that consumers will feel safe to transact with them. Technology is not enough. An enabling legal environment to protect consumers is necessary. Government has been pursuing the enactment of anti-cybercrime and data privacy laws complete with penalties and sanctions for crimes and violations of the law. Continuous review of existing laws and assessment of the environment is important to determine policy amendments and policy gaps to see to it that the legal and enabling environment is in sync with current realities.

The existence of a clear mechanism for consumer complaints handling is necessary so that consumers will know they have somewhere to go to if they encounter problems with their online purchases. The Joint DTI – DOH – DA Administrative Order

mentioned earlier requires that the online merchant should have a complaints mechanism in place for the benefit of consumers. If problems are not addressed at this level, then that's the time that consumers will go to the appropriate government agency where they can file their complaint.

A more proactive stance to build consumer confidence for online transactions is the trustmark program. Once the consumer sees the mark which signifies that it is safe to transact through that website, then the consumer will not hesitate to pursue the transaction since he is confident that he is dealing with a trustworthy site.

#### *1.5.4. Need for International Cooperation*

E-commerce is global, it knows no boundaries. However, cross border transactions are always confronted with issues of jurisdiction. This is something that is very difficult to address because countries have their own set of laws and the protection of their citizens is paramount. To surmount this problem, countries resort to cooperation arrangements to address cross border issues.

There is an ongoing project in APEC that can be cited as an example of this kind of arrangement. The Electronic Commerce Steering Group has completed the draft arrangement which is referred to as the APEC Cross Border Privacy Cooperation Arrangement. However, there is still work to be done on the implementation mechanism. The Philippines is actively participating in this project because data privacy is a major issue of the IT-BPO sector.

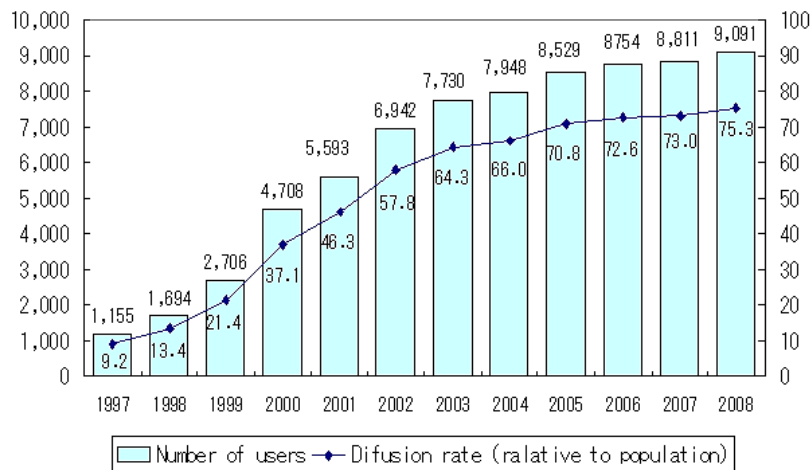
Consumer protection is another concern that can be a subject of a cooperation arrangement among countries. For the Philippines, this is important so that local online merchants can tap consumers in other countries. There are also so many Filipinos residing in different countries, either as immigrants or overseas workers, and a lot of local online merchants cater to their needs. The existence of a clear and effective cross border complaints handling mechanism will project to the consumers within the Philippines and in other countries who are part of this arrangement, that the e-commerce marketplace is secure and safe.

## 1.6. Japan

### 1.6.1. E-commerce Market

Some updates of e-commerce market will be inserted here. Fundamental information has already published to the ERIA Research Project Report 2008<sup>7</sup>.

**Figure 1.17. The Number of Internet Users and Diffusion Rate**

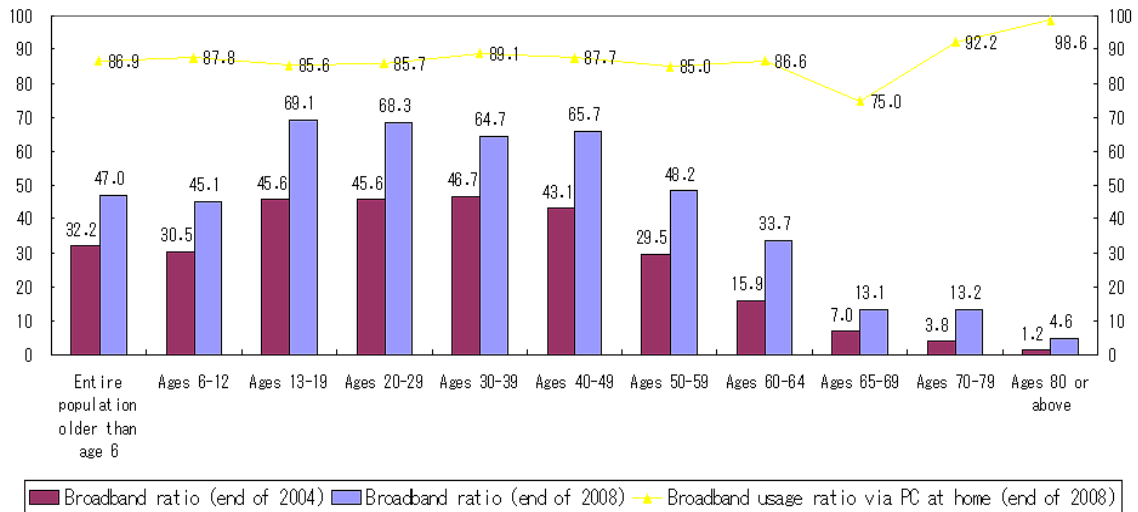


*Note:* Unit: 10 thousand people.

*Source:* 2009 WHITEPAPER Information and Communications in Japan, Ministry of Internal Affairs and Communications (MIC)

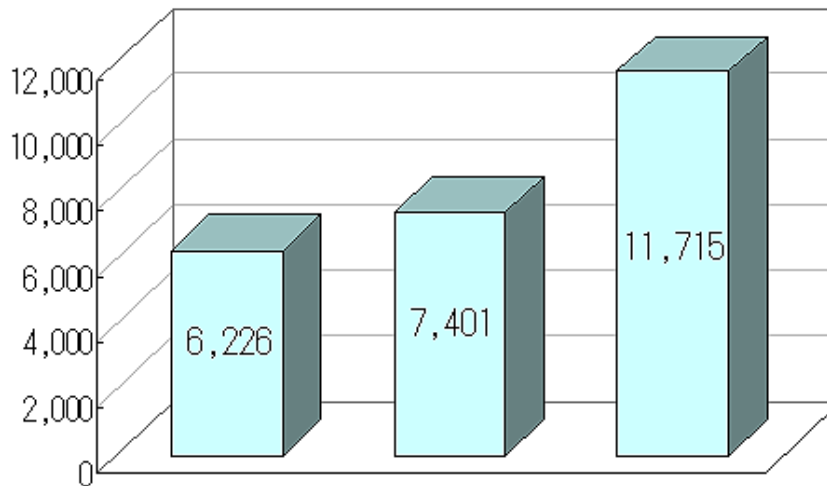
<sup>7</sup> [http://eria.org/pdf/research/y2008/no3-2/III.Research\\_for\\_Establishment.pdf](http://eria.org/pdf/research/y2008/no3-2/III.Research_for_Establishment.pdf).

**Figure 1.18. Broadband Usage**



Source: 2009 WHITEPAPER Information and Communications in Japan, Ministry of Internal Affairs and Communications (MIC).

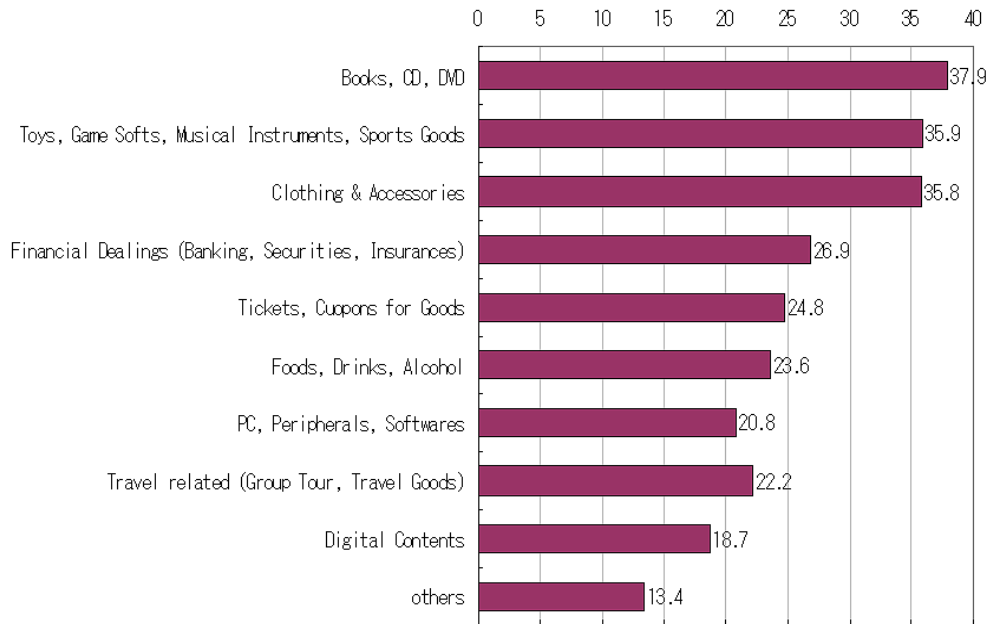
**Figure 1.19. The Projection of B toC EC Market Size in Japan**



Note: Unit: Billion yen.

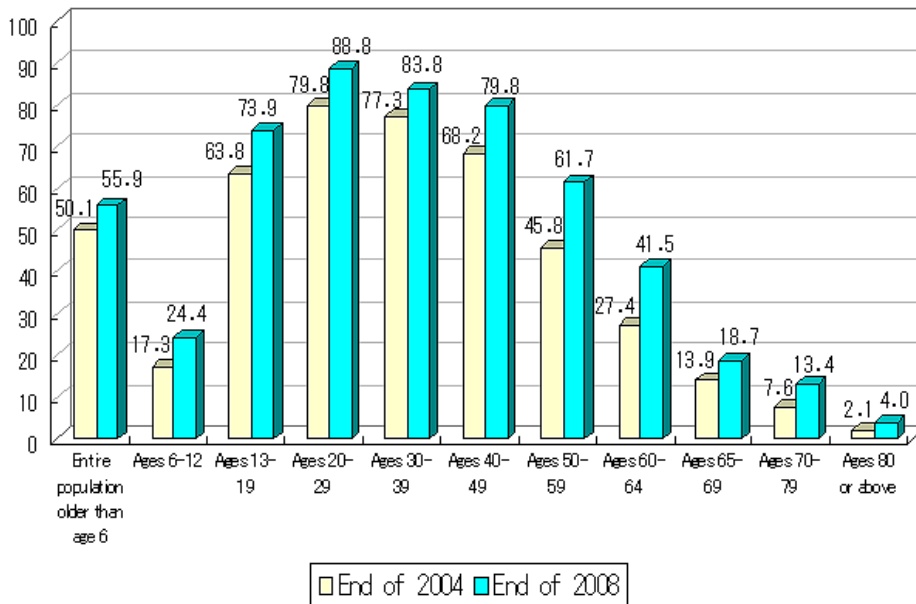
Source: The projection of IT market size in Japan (surveyed by Nomura Research Institute in December 2008).

**Figure 1.20. The Hot-selling Products**



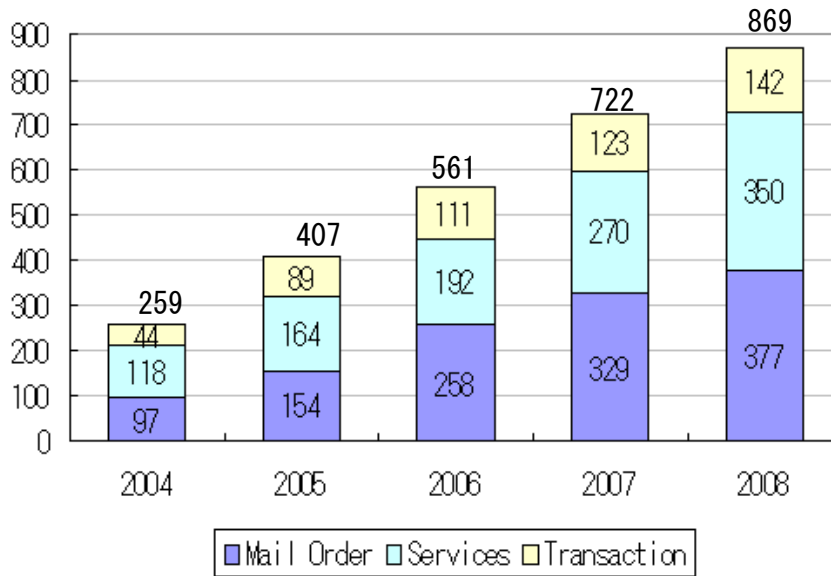
Source: 2009 WHITEPAPER Information and Communications in Japan, Ministry of Internal Affairs and Communications (MIC).

**Figure 1.21. Mobile Phone Internet Usage**



Source: 2009 WHITEPAPER Information and Communications in Japan, Ministry of Internal Affairs and Communications (MIC).

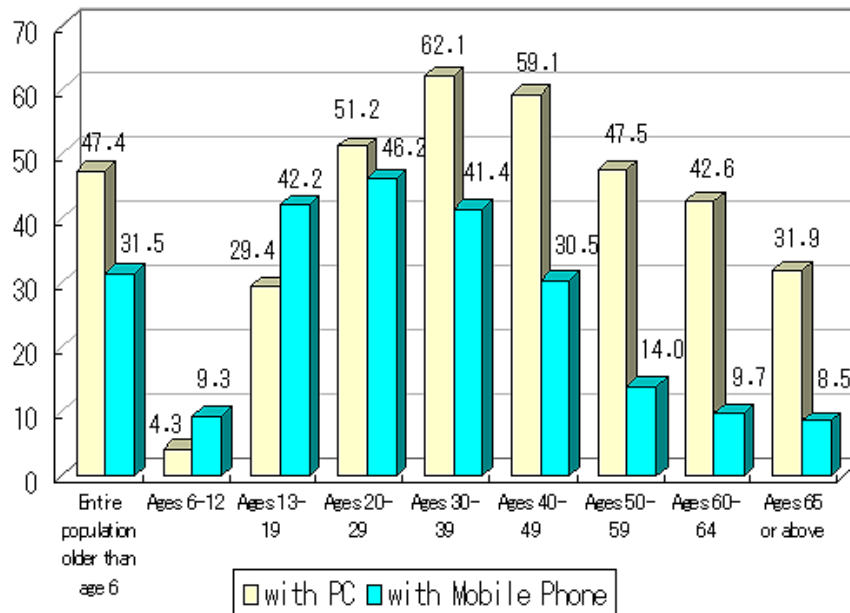
**Figure 1.22. Mobile Commerce Market in Japan**



*Note:* Billion yen.

*Source:* Mobile Content Forum on July 18, 2008.

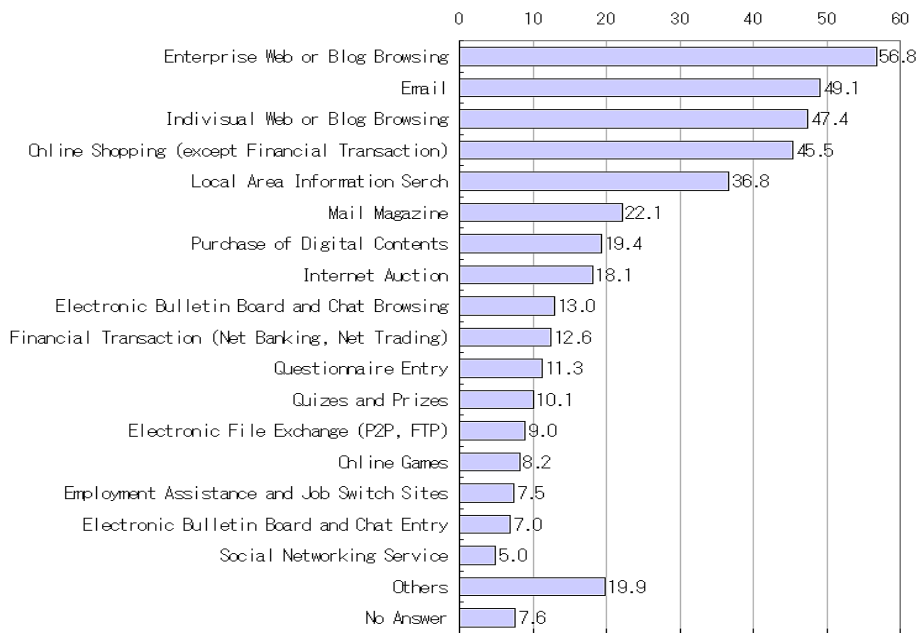
**Figure 1.23. Utilization Experience of Online Shopping**



*Source:* 2009 WHITEPAPER Information and Communications in Japan, Ministry of Internal Affairs and Communications (MIC).



**Figure 1.24. Services & Functions used on the Internet**



Source: 2009 WHITEPAPER Information and Communications in Japan, Ministry of Internal Affairs and Communications (MIC).

### 1.6.2. Legal Systems Related to e-Commerce in Japan

#### (1) Introduction

In Japan, the development of the legal systems concerning e-commerce has been introduced, and the Japanese government enacted related laws and regulations. Applicable laws to e-commerce are as follows<sup>8</sup>:

Name of the law	Abbreviation	URL
The Act on Specified Commercial Transactions	ASCT	<a href="http://www.japaneselawtranslation.go.jp/law/detail/?n%5B%5D=%E3%81%A8&amp;re=02&amp;ky=%E7%92%B0%E5%A2%83&amp;page=5">http://www.japaneselawtranslation.go.jp/law/detail/?n%5B%5D=%E3%81%A8&amp;re=02&amp;ky=%E7%92%B0%E5%A2%83&amp;page=5</a>

<sup>8</sup> The above-mentioned laws are unofficial translations. English translations of Japanese laws are available. <http://www.japaneselawtranslation.go.jp/?re=02>.

The Consumer Contract Act	CCA	<a href="http://www.japaneselawtranslation.go.jp/law/detail_main?vm=&amp;id=108">http://www.japaneselawtranslation.go.jp/law/detail_main?vm=&amp;id=108</a>
The Act against Unjustifiable Premiums and Misleading Representations	AUPMR	<a href="http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&amp;re=02&amp;dn=1&amp;co=01&amp;x=41&amp;y=19&amp;ky=unjustifiable+premiums+and+misleading&amp;page=1">http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&amp;re=02&amp;dn=1&amp;co=01&amp;x=41&amp;y=19&amp;ky=unjustifiable+premiums+and+misleading&amp;page=1</a>
The Act on Regulation of Transmission of Specified Electronic Mail	ARTSEM	<a href="http://www.japaneselawtranslation.go.jp/law/detail/?re=02&amp;al%5B%5D=A&amp;ky=%E5%8F%96%E5%BC%95&amp;page=10">http://www.japaneselawtranslation.go.jp/law/detail/?re=02&amp;al%5B%5D=A&amp;ky=%E5%8F%96%E5%BC%95&amp;page=10</a>
The Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice	Electronic Consumer Contracts Act	<a href="http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&amp;vm=&amp;id=116">http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&amp;vm=&amp;id=116</a>
The Product Liability Act	PLA	<a href="http://www.japaneselawtranslation.go.jp/law/detail_main?id=86&amp;vm=&amp;re=">http://www.japaneselawtranslation.go.jp/law/detail_main?id=86&amp;vm=&amp;re=</a> <a href="http://www.japaneselawtranslation.go.jp/law/detail/?x=34&amp;y=7&amp;re=02&amp;co=1&amp;yo=&amp;gn=&amp;sy=&amp;ht=&amp;no=&amp;bu=&amp;ta=&amp;ky=consumer+product+safety+law&amp;page=">http://www.japaneselawtranslation.go.jp/law/detail/?x=34&amp;y=7&amp;re=02&amp;co=1&amp;yo=&amp;gn=&amp;sy=&amp;ht=&amp;no=&amp;bu=&amp;ta=&amp;ky=consumer+product+safety+law&amp;page=</a> <a href="#">4</a>
The Consumer Product Safety Act	CPSA	<a href="http://www.japaneselawtranslation.go.jp/law/detail_main?id=86&amp;vm=&amp;re=">http://www.japaneselawtranslation.go.jp/law/detail_main?id=86&amp;vm=&amp;re=</a> <a href="http://www.japaneselawtranslation.go.jp/law/detail/?x=34&amp;y=7&amp;re=02&amp;co=1&amp;yo=&amp;gn=&amp;sy=&amp;ht=&amp;no=&amp;bu=&amp;ta=&amp;ky=consumer+product+safety+law&amp;page=">http://www.japaneselawtranslation.go.jp/law/detail/?x=34&amp;y=7&amp;re=02&amp;co=1&amp;yo=&amp;gn=&amp;sy=&amp;ht=&amp;no=&amp;bu=&amp;ta=&amp;ky=consumer+product+safety+law&amp;page=</a> <a href="#">4</a>

The following paragraphs provide an in-depth analysis of Japan’s legal systems, focusing on consumer protection, protection of personal and business information, and special regulations on e-commerce businesses.

## (2) Consumer Protection Laws

### 1) Advertisement and Provision of Information

The ASCT regulates unfair solicitation and advertisement in the areas of door-to-door sales, mail order sales, and peer marketing sales. E-commerce is categorized as mail order sales. Under the ASCT, business entities (i) are prohibited from causing a consumer to enter into an application for a sales contract against his will, (ii) should describe the information of themselves and goods or services, (iii) are prohibited from making an advertisement that differs vastly from the truth or misleads people into believing that it is vastly better or more advantageous than it is in reality, and (iv) may send an email advertisement only to those who have agreed to receive such advertisement in advance.

The CCA provides consumers with the right to cancel consumer contracts which are executed through misrepresentation by businesses.

The AUPMR prohibits representations which are likely to be misunderstood by ordinary consumers, and also prevents the tendency to induce customers unjustly. The Act also regulates solicitations of customers by false or excessive representations or premiums.

The ARTSEM prohibits spam emails (especially sending email advertisements without the prior consent of the recipient).

The business entities that violate these regulations may be ordered to suspend their advertisement or businesses, and such order may be made public.

### 2) Conclusion of Contract

Under the Electronic Consumer Contract Act, where a consumer makes an offer or accepts the offer for an electronic consumer contract by mistake, such an offer or an acceptance has no effect and the contract is invalid, even if consumer's gross negligence causes such mistake unless the business entity has taken measures to confirm the consumer's intention to make an offer or to accept the offer by electromagnetic means on the visual browser.

Under the CCA, a consumer can cancel a contract if a business entity solicits the consumer's offer or acceptance of the contract by representing false facts regarding important matters or by providing conclusive evaluations of uncertain items relating

to the goods or services.

3) Availability of Cooling-off

“Cooling-off” provided by the ASCT is not applicable to e-commerce transactions as a general rule. However, as a consumer's right similar to cooling-off, the ACST makes it possible for consumers to terminate e-commerce contracts until eight days have passed from the date of the delivery of the goods or services unless the business entity clearly states the conditions for return of goods in the advertisement.

4) Contents of Contract

Under the CCA, the following clauses in a consumer contract are invalid:

- a) A clause exempting a business entity completely from liability to compensate a consumer for damages arising from the business entity's default
- b) A clause exempting a business entity partially from liability to compensate a consumer for damages arising from the business entity's default (such default shall be limited to cases where the same arises due to the intentional act or gross negligence on the part of the business entity, the business entity's representative or employee)
- c) A clause exempting a business entity completely from liability to compensate a consumer for damages arising by a tort committed on occasion of the business entity's performance of a consumer contract
- d) A clause exempting a business entity completely from liability to compensate a consumer for damages caused by a latent defect in the material subject
- e) Any other clause unilaterally damaging the benefit of a consumer

5) Performance of Contract

The PLA provides strict liability of manufacturers. Consumers who suffer from infringement of life, body or property caused by a defect of the product may claim for compensation without the proof of the negligence of the manufacturer. For claiming damages, consumers are required to prove the product's defect instead of the business entity's intent or negligence.

The CPSA provides that a label confirming the product meets the technical standards is necessary when a designated product is sold.

The CPSA is applicable to consumer products. The consumer products that are deemed as being highly likely to cause danger particularly to the lives or bodies of general consumers in consideration of these products' structure, material, and usage are regulated as “specified products”.

#### 6) Dispute Resolution

Consumers may bring lawsuits against business entities. Consumers also may submit a dispute to arbitration if there is an arbitration agreement between a consumer and a business entity. An arbitral award shall have the same effect as a final and conclusive judgment of the court under the Arbitration Law. As well as lawsuit and arbitration, consumers may ask dispute resolution service providers who are certified pursuant to the Act on Promotion of Use of Alternative Dispute Resolution<sup>9</sup> to support the parties to reach an amicable settlement. While such arrangement does not bind the parties to the dispute, it facilitates solving the dispute by reconciliation.

#### 7) Class Action

Japan does not provide class action lawsuits as a general rule. However, under the CCA and the AUPMR, consumer organizations certified as qualified consumer organizations by the Prime Minister may demand business entities that violate or are likely to violate the regulations under the CCA or the AUPMR to stop or prevent such acts on behalf of general consumers.

Under the CCA and the AUPMR, qualified consumer organizations may demand business entities that violate or are likely to violate the regulations to stop or prevent such acts on behalf of general consumers.

Under the CCA, when consumers are solicited to enter into a contract concluded between consumers on the one hand and business entities on the other, business entities should endeavor to provide the necessary information about the consumer's rights and duties and such other things set forth in the consumer contract.

The AUPMR and the related rules prohibit false or misleading representation with respect to the country of origin of products.

The AUMPR also regulates premiums that are given as a means of inducement

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<sup>9</sup> <http://www.cas.go.jp/jp/seisaku/hourei/data/AOP.pdf>.

to customers. The maximum amounts of premiums (i) given by a lottery method and (ii) given without lottery are limited respectively to (i) the smaller of 100,000 yen or 20 times the transaction price and (ii) the smaller of 200 yen or 20 percent of the transaction price.

The business entities that violate these regulations may be ordered to suspend their representation, offering or premiums or businesses, and such order may be made public.

### (3) Protection of Personal and Business Information

#### 1) Protection of Consumer's Personal Information

The Act on the Protection of Personal Information<sup>10</sup> ("APPI") imposes duties on entities handling personal information, and protects the rights of persons who are the original owners of personal information. Under the APPI, a business entity handling personal information assumes the following obligations.

- specifies the purpose of using personal information;
- does not handle personal information beyond the scope necessary for the achievement of such purpose;
- does not acquire personal information by a deception or other wrongful means;
- notifies the person of or publicly announces such purpose;
- endeavors to maintain personal information accurate and up to date;
- takes necessary and proper measures for the prevention of leakage, loss, or damage, or for other security control of personal information;
- does not provide personal information to a third party without the prior approval of the person; and
- endeavors to appropriately and promptly process complaints about the handling of personal information.

When a business entity has violated either of the above-mentioned regulations, the competent Minister may recommend or order that the business entity cease the violation and take other necessary measures to correct the violation. The violation of such orders may lead to punishment (imprisonment with work of not more than

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<sup>10</sup> <http://www.cas.go.jp/jp/seisaku/hourei/data/APPI.pdf>.

six months or a fine of not more than 300,000 yen).

Under the APPI, an original owner of the personal information has the right:

- to request disclosure of retained personal data as may lead to the identification of the person;
- to correct, add and delete retained personal data that is contrary to the fact; and
- to discontinue using or to delete retained personal data that is being handled or has been acquired in violation of the provisions of the APPI.

## 2) Protection of Business Information

There are no specific regulations in terms of information disclosure of business. No special laws regulate the disclosure of the information of businesses. Accordingly, it is possible for a third party to disclose the information of businesses in general. There are no laws and regulations which directly prohibits a public announcement of the facts of dispute and the name of company which is involved in consumer disputes. However, if an announcement is proved to contain false information, such an announcement could be found as a tortuous act. Furthermore, it should be noted that, under the Japanese laws and precedents, even business entities has their "honor" to be protected from infringement.

## 3) Specific Regulations on e-Commerce Businesses

Similar to other jurisdictions, some types of products or services, such as medicine, medical devices, alcoholic beverages, tobacco, etc., require a seller to obtain the relevant permission or approval of the competent authority before starting its operations. These types of regulations equally apply to e-commerce businesses while there are no requirements to start e-commerce businesses generally. However, it should be noted that, by law or by practical regulation, some products still require "face-to-face selling".

### *1.6.3. Efforts to Build Confidence in e-Commerce*

As shown in the last year's report, ECNetwork continues to handle cross-border complaints. In this year's report, three notable cases will be inserted as updates of cross-border complaint trends from Japanese consumers. Fundamental information

has already published to the ERIA Research Project Report 2008<sup>11</sup>.

#### Study case 1: Auction Agent's Liability for Defect Warranty

A Japanese consumer succeeded in bidding for a communication device at a foreign auction site through an auction agent in a different country after reading a description of the device in Japanese. The auction agent states that it inspects goods prior to shipment to the bidder in Japan. The agent has a sales contract with the bidder. The bidder discovered that he had received a defective product. He contacted the customer service department of the auction agent and requested a refund and return of the goods. However, the agent rejected his claim by stating, "We stipulate in our terms and conditions that we do not guarantee or ensure the performance of electric appliances", but no special contract is available in terms of the liability for defect warranty. However, the agent made no concessions citing in its refund and return policy that, "If the item was distinctly different from the description of the item, we will issue a refund."

We sought advice from our lawyer as to whether the bidder has a right to obtain a refund or return goods due to the exception clause. Our lawyer's view was that the bidder should be able to cancel the sales contract and obtain a refund under the liability for defect warranty. Through this auction agent, Japanese consumers can participate in foreign auction sites without worrying about the language barrier. The auction agent conducts an inspection of goods before shipping to bidders. In addition to this, bidders are not allowed to contact sellers, so this complainant felt indignant over the agent. However, the agent does not assume any responsibility for risks that may arise – for example, when the agent finds items such as counterfeit brand name goods or defective electrical appliances. On the grounds of its terms and conditions, the agent continued to dismiss the consumer's claims.

#### Study case 2: Prohibited imports

This complaint is against the same auction agent above. The consumer paid about 310,000 yen (approx. 3,450 US dollars) at auction for a guitar made of rosewood. The consumer knew that prohibited imports would not be sent to bidders according to the terms and conditions of the auction site but he did not know the guitar fell into the prohibited imports category due to the

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<sup>11</sup> [http://eria.org/pdf/research/y2008/no3-2/III.Research\\_for\\_Establishment.pdf](http://eria.org/pdf/research/y2008/no3-2/III.Research_for_Establishment.pdf).



Washington Convention. The consumer sought the return of the cost of commission and the guitar. As in Study case 1, the agent defends its position by claiming it stipulates the ban on import of certain products in its terms and conditions. The complainant has not obtained a refund.

To some degree, this consumer is at fault because he bid for prohibited imports. However, such lists were not clearly stated in the website of the agent, so its users are likely to bid for prohibited imports. The auction agent did not soften its stance, but we think this transaction is unfair and the cost of the item at least should be refunded because this complainant did not receive anything. Furthermore, we received complaints from other consumers that this auction site did not clearly stipulate its shipping cost including the cost of shipping insurance, consumption tax in a foreign country or customs. It seems that there are many flaws in the auction agent's system and more user-friendly services should be provided. Nevertheless, the auction agent still continues unfavorable business practice.

### Study case 3: Non-gratis Electronic System for Travel Authorization (ESTA)

The US government has made it obligatory for tourists and business visitors to the US to obtain an ESTA prior to their visit. All applicants can obtain the ESTA through the website of the US embassy at no charge. Several ESTA application agents were displayed on the sponsored link by inputting "ESTA" in the Internet search engine. One of the ESTA application agents was located in South Korea, operating without clearly stating themselves as "agents". Some Japanese did not realize the site was an agent and paid an application fee by credit card. They obtained the ESTA, but were suspected of misusing their credit card information.

This case was probably not fraud, but misled many consumers. The US embassy together with the Ministry of Foreign Affairs of Japan has promoted awareness about these manipulative agents. The EC Network reported a leading search site regarding this problem, and the search site deleted those agents who did not clearly state themselves as an "agent" on the sponsored link. Now the webpage of the Embassy of the United States in Japanese sites that describe that the ESTA application is free is displayed at the top of search engines.

## **1.7. Comparison of Consumer Protection Laws**

### **(1) Introduction**

As we are considering how to establish a consumer complaint handling system for cross-border e-commerce transactions, it is useful for us to have a mutual understanding of each country's legal system relating to consumer protection in the e-commerce area. Based on such recognition, we have seen the details of each country's legal system in the preceding sections.

So as to facilitate such understanding further, in this section, we compare the legal systems from certain viewpoints that we consider as important and helpful.

### **(2) Comparison Method**

In order to make an effective comparison, we sent a questionnaire to each country and asked them to complete it prior to the second workshop. The questionnaire contained questions relating to (i) consumer protection law applicable to e-commerce, (ii) protection of personal and business information, and (iii) special regulations on e-commerce (such as approval, permission, license, registration or notification for conducting e-commerce business). The question (i) above consists of (a) regulations on advertisement and provision of information to consumers, (b) regulations on the process of concluding consumer contracts, (c) availability of cooling-off, (d) regulations on contents of contracts (such as unfair contract terms), (e) regulations on performance of contracts (such as safety or quality of goods or services), (f) dispute resolution systems available to consumers, and (g) availability of class action or any other similar proceedings.

We obtained the answers from Malaysia, Vietnam, the Philippines, Korea and Japan, and summarized such answers in the comparison chart.

This comparison chart will enable us to obtain a good knowledge of the best practice of a foreign country and open the way to high-level harmonization. Moreover, it will be beneficial not only for e-commerce businesses, but also for the policy makers in each country.

\* Comparison of Legal Systems relating to e-commerce  
(based on the additional research reports from the member countries)

1) Consumer Protection Law (Advertisement and Provision of Information)

Country	Laws
Malaysia	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act 1999</u></b> regulates misleading and deceptive conduct, false representation and unfair practice.</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Fair Trading Act</u></b> regulates unfair practices that may deceive or mislead consumers and provides consumers with the right to seek redress. <i>[details to be researched]</i></li> </ul>
Thailand	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act</u></b> provides consumers' right to receive correct and sufficient information and description as to the quality of goods or services. <i>[details to be researched]</i></li> </ul>
Vietnam	<ul style="list-style-type: none"> <li>▶ <b><u>The Law on Information Technology</u></b> provides that e-commerce businesses shall ensure to provide consumers with full details and accurate information about goods, services, trading conditions, procedures for dispute settlement, compensation, payment security, the consumers' right to cancel or amend the agreement (if any), etc.</li> <li>▶ <b><u>Decree No 57/2006/ND-CP</u></b> and <b><u>Circular No 09/2008/TT-BCT</u></b> provide that merchants should take the necessary steps to ensure that any representation about a good or service is current, accurate, and not deceptive or misleading to consumers and that the truthfulness of objective claims is substantiated.</li> <li>▶ <b><u>Circular No 09/2008/TT-BCT</u></b> (i) requires the provision of information about traders, goods, services, price, other terms of sales contract, transportation, delivery and reception, and (ii) provides that in the information supply and contract conclusion on e-commerce websites, traders and website owners must not supply false information or apply other technical measures to commit illegal acts.</li> <li>▶ <b><u>The Consumer Protection Law (Drafted)</u></b> will have provisions relating to consumer protection prior to transactions with the</li> </ul>

	businesses.
<b>People's Republic of China</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on Protection of Consumer Rights and Interests</u></b> provides consumers with the right to sufficient information about goods or services. <i>[details to be researched]</i></li> </ul>
<b>The Philippines</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Act of the Philippines</u></b> prohibits dissemination of false, deceptive, or misleading advertisement.</li> <li>▶ <b><u>DTI-DOH-DA Joint Administrative Order No. 1, Series of 2008</u></b> provides that e-commerce businesses shall (i) refrain from engaging in false, deceptive, or misleading advertisement and (ii) provide accurate, clear and easily accessible information relating to themselves, products or services and terms and conditions of consumer transactions.</li> </ul>
<b>South Korea</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act on Electronic Transaction</u></b> (i) provides that (a) advertisements on the internet shall contain the information identifying the seller and (b) the seller shall notify the information on the supplier, seller, goods, price, payment, delivery, etc. and (ii) prohibits misleading or deceptive representation.</li> </ul>
<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on Specified Commercial Transactions</u></b> regulates unfair solicitation and advertisement.</li> <li>▶ <b><u>The Consumer Contract Act</u></b> provides consumers with the right to cancel consumer contracts which are executed through misrepresentation by businesses.</li> <li>▶ <b><u>The Act against Unjustifiable Premiums and Misleading Representation</u></b> regulates solicitations of customers by false or excessive representations or premiums.</li> <li>▶ <b><u>The Act on Regulation of Transmission of Specified Electronic Mail</u></b> regulates spam emails.</li> </ul>

2) Consumer Protection Law (Conclusion of Contract)

Country	Laws
Malaysia	<p>▶ <b><u>The Electronic Commerce Act 2006</u></b> provides that where an addressee receives an electronic message, the addressee is entitled to regard the electronic message as being what the originator intended to send, and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic message as received.</p>
Singapore	<p>▶ <i>[details to be researched]</i></p>
Thailand	<p>▶ <b><u>The Consumer Protection Act</u></b> provides consumers' right to enjoy freedom in the choice of goods or services. <i>[details to be researched]</i></p>
Vietnam	<p>▶ <b><u>The Law on Electronic Transaction No 51/2005/QH11</u></b> regulates signing and implementing of electronic contracts.</p> <p>▶ <b><u>Circular No. 09/2008/TT-BCT</u></b> regulates (i) requests and replies to request for contract conclusion, (ii) termination of such requests, (iii) timing of contract conclusion, (iv) legal validity of contracts concluded through online goods ordering function, and (v) supply of contractual terms. The Circular also regulates the mechanism of checking and confirming the contract contents and procedures of terminating long-term contracts.</p>
People's Republic of China	<p>▶ <b><u>The Act on Protection of Consumer Rights and Interests</u></b> provides consumers with the right to choose goods or services. <i>[details to be researched]</i></p>
The Philippines	<p>▶ <b><u>DTI-DOH-DA Joint Administrative Order No. 1, Series of 2008</u></b> provides that business entities shall provide consumers the opportunity to (i) review the terms and conditions of the contract, (ii) identify the product or service, (iii) identify and correct or modify the order, etc.</p>

<b>South Korea</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act on Electronic Transaction</u></b> provides that sellers shall set up the procedure so that consumers can confirm or cancel the offer before signing the contract.</li> </ul>
<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice</u></b> provides that an offer or acceptance of the offer for an electronic consumer contract made by a consumer by mistake has no effect unless the business entity has taken measures to confirm the consumer's intention to make an offer or to accept the offer.</li> </ul>

### 3) Consumer Protection Law (Availability of Cooling-Off)

<b>Country</b>	<b>Laws</b>
<b>Malaysia</b>	<ul style="list-style-type: none"> <li>▶ No cooling-off under <b><u>the Consumer Protection Act 1999</u></b>.</li> <li>▶ Though <b><u>the Direct Sales Act 1993</u></b> provides that a purchaser may rescind the direct sale contract during the cooling-off period (10 working days from the conclusion of the contract), it is generally thought that the Act is not applicable to e-commerce.</li> </ul>
<b>Singapore</b>	<ul style="list-style-type: none"> <li>▶ Although the Consumer Protection Fair Trading Act provides a cooling-off system, it is applicable only to Direct Sales Contracts, Time Share Contracts and Time Share Related Contracts and is not to e-commerce. <i>[details to be researched]</i></li> </ul>
<b>Thailand</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Direct Sales and Direct Marketing Act</u></b> provides consumers with the right of cooling-off regarding Direct Sales and Direct Marketing. It is necessary to confirm if “Direct Sales” or “Direct Marketing” includes e-commerce. <i>[details to be researched]</i></li> </ul>
<b>Vietnam</b>	<ul style="list-style-type: none"> <li>▶ Though a cooling-off system is not mandatory, business entities may offer to consumers and adopt it voluntarily.</li> <li>▶ <b><u>The Consumer Protection Law (Drafted)</u></b> will have no provisions relating to a cooling-off system.</li> </ul>
<b>People's Republic</b>	<ul style="list-style-type: none"> <li>▶ <i>[details to be researched]</i></li> </ul>

<b>of China</b>	
<b>The Philippines</b>	<ul style="list-style-type: none"> <li>▶ Though the terms under the cooling-off system are not specifically prescribed by the government, details about cooling-off period or right of withdrawal shall be provided by e-commerce businesses to consumers under <b><u>DTI-DOH-DA Joint Administrative Order No. 1, Series of 2008</u></b>.</li> </ul>
<b>South Korea</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act on Electronic Transaction</u></b> provides that a consumer can withdraw the offer within 7 days of the day on which written documents of the contract were delivered to him.</li> </ul>
<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ The cooling-off system provided by <b><u>the Act on Specified Commercial Transactions</u></b> is not applicable to mail order sales (including e-commerce). However, the Act provides consumers with the right (similar to cooling-off) to terminate contracts if a business does not clearly state the conditions for return of goods in the advertisement.</li> </ul>

4) Consumer Protection Law (Contents of Contract)

Country	Laws
Malaysia	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act 1999</u></b> will be amended to include the regulations on unfair contract terms in 2010.</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>▶ <b><u>The Unfair Contract Terms Act</u></b> stipulates the limitation of exemption of liability by means of contract terms. <i>[details to be researched]</i></li> <li>▶ <b><u>The Hire-Purchase Act</u></b> regulates the form and contents of hire-purchase agreements and the rights and duties of parties to agreements. <i>[details to be researched]</i></li> </ul>
Thailand	<ul style="list-style-type: none"> <li>▶ <b><u>The Unfair Contract Terms Act</u></b> regulates the effects of unfair contract terms in consumer contracts. <i>[details to be researched]</i></li> </ul>
Vietnam	<ul style="list-style-type: none"> <li>▶ Articles relating to unfair contract terms in <b><u>the Civil Code</u></b> provide consumers with the right to fair trade.</li> </ul>
People's Republic of China	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on Protection of Consumer Rights and Interests</u></b> provides consumers with the right to fair trade. <i>[details to be researched]</i></li> </ul>
The Philippines	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Act of the Philippines</u></b> prohibits the stipulation in a contract of a clause preventing, exonerating or reducing the obligation to indemnify for damages effected.</li> <li>▶ <b><u>DTI Department Administrative Order No. 2, Series of 1993 (Implementing Rules and Regulations of Republic Act No. 7394 or the Consumer Act of the Philippines)</u></b> provides that the words “No return, no exchange” shall not be written in a sales contract.</li> </ul>
South Korea	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act on Electronic Transaction</u></b> provides that any contract which violates such restrictions on withdrawal of agreement or damage compensation as stipulated in this Act and is unfavorable to consumer shall be null and void.</li> <li>▶ <b><u>The Act on Regulation of Unfair Contract Term</u></b> provides that (i) unfair trade terms shall be null and void when they are against</li> </ul>



	the principle of good faith and (ii) the clause which exempts business from their liabilities is null and void.
<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Contract Act</u></b> provides that clauses unilaterally damaging the benefit of a consumer in a consumer contract are invalid such as (i) a clause exempting a business entity completely from liability to compensate damages arising from the business entity's default, (ii) a clause exempting a business entity partially from liability to compensate damages arising from the business entity's default due to the intentional act or gross negligence, etc.</li> </ul>

5) Consumer Protection Law (Performance of Contract)

<b>Country</b>	<b>Laws</b>
<b>Malaysia</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act 1999</u></b> regulates safety of goods and services, guarantees in respect of supply of goods and services, and product liability.</li> </ul>
<b>Singapore</b>	<ul style="list-style-type: none"> <li>▶ <i>[details to be researched]</i></li> </ul>
<b>Thailand</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Act</u></b> provides consumers with the right to expect safety in the use of goods or services. <i>[details to be researched]</i></li> </ul>
<b>Vietnam</b>	<ul style="list-style-type: none"> <li>▶ <b><u>Ordinance No 13/1999/PL-UBTVQH10 on Consumer Protection</u></b> regulates responsibilities of the individual, organization in informing the quality or the safety of goods and services.</li> <li>▶ <b><u>The Consumer Protection Law (Drafted)</u></b> will have provisions relating to consumer protection in using goods and services.</li> </ul>
<b>People's Republic of China</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on Protection of Consumer Rights and Interests</u></b> provides consumers with the right to safety of the human body and property. <i>[details to be researched]</i></li> </ul>
<b>The Philippines</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Act of the Philippines</u></b> provides that (i) the supplier's ignorance of the quality imperfections due to inadequacy of the products and services does not exempt him</li> </ul>

	<p>from any liability and (ii) the legal guarantee of product or service adequacy does not require an express instrument or contractual exoneration of the supplier being forbidden.</p> <p>▶ <b><u>DTI Department Administrative Order No. 2, Series of 1993 (Implementing Rules and Regulations of Republic Act No. 7394 or the Consumer Act of the Philippines)</u></b> provides that suppliers shall correct a product imperfection within 30 days of the notification made by the consumer.</p>
<b>South Korea</b>	<p>▶ <b><u>The Consumer Protection Act on Electronic Transaction</u></b> provides that (i) when the content of goods is different from the label or advertisement, the consumer can withdraw the offer within 3 months of receiving the goods or 30 days from knowing or being able to know the fact, (ii) damage compensation the seller may claim due to the fault of the consumer shall be limited to a certain amount, and (iii) the seller shall take a burden of proof in disputes relating to the period of contract, supply of goods or consumers' responsibility.</p>
<b>Japan</b>	<p>▶ <b><u>The Product Liability Act</u></b> provides that a manufacturer shall be liable for damages caused by the defect in the delivered product.</p> <p>▶ <b><u>The Consumer Product Safety Act</u></b> provides that a specified product without a label confirming such product meets the technical standards is prohibited from being sold.</p>

6) Consumer Protection Law (Dispute Resolution)

<b>Country</b>	<b>Laws</b>
<b>Malaysia</b>	<p>▶ In addition to lawsuits and arbitrations, consumers may lodge claims with the Tribunal for Consumer Claims established under <b><u>the Consumer Protection Act 1999</u></b>.</p>
<b>Singapore</b>	<p>▶ <i>[details to be researched]</i></p>
<b>Thailand</b>	<p>▶ <i>[details to be researched]</i></p>
<b>Vietnam</b>	<p>▶ In addition to lawsuits, consumers may lodge complaints (i)</p>

	<p>through Standard and Consumer Protection Associations, local Consumer Complaint Offices or State competent bodies against business entities, or (ii) to state management agencies.</p> <ul style="list-style-type: none"> <li>▶ <b>Circular No. 09/2008/TT-BCT</b> provides that traders shall publicize on websites the mechanism and specific process of settlement of customers' complaints related to the concluded contract.</li> <li>▶ The Vietnam E-commerce Association is currently setting up an ADR mechanism to support dispute resolution services.</li> </ul>
<b>People's Republic of China</b>	<ul style="list-style-type: none"> <li>▶ Under <b><u>the Act on Protection of Consumer Rights and Interests</u></b>, consumers can make use of (i) reconciliation with businesses after consultation, (ii) mediation by the China Consumer's Association, (iii) request to relevant administrative sections, (iv) arbitration based on agreement on arbitration, and (v) lawsuit at People's court. <i>[details to be researched]</i></li> </ul>
<b>The Philippines</b>	<ul style="list-style-type: none"> <li>▶ Lawsuit, arbitration, and procedure for filing a complaint with relevant agencies are available.</li> <li>▶ Business entities are required to set up an internal complaint-handling mechanism for consumer complaints under <b><u>DTI-DOH-DA Joint Administrative Order No. 1, Series of 2008</u></b>.</li> </ul>
<b>South Korea</b>	<ul style="list-style-type: none"> <li>▶ As well as lawsuit and arbitration, mediation services by the Electronic Commerce Mediation Committee and by the Personal Information Dispute Mediation Committee and ADR services by the Consumer Dispute Settlement Commission are available under <b><u>the Basic Act on Electronic Commerce</u></b>.</li> </ul>
<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ As well as lawsuit and arbitration, consumers may ask dispute resolution business operators who are certified pursuant to <b><u>the Act on Promotion of Use of Alternative Dispute Resolution</u></b> to arrange settlements under a contract between the parties to the dispute.</li> </ul>

	<ul style="list-style-type: none"> <li>▶ The National Consumer Affairs Center of Japan and Consumer Affairs Centers established by each local government provide complaint handling and consulting services to consumers. In addition, the Dispute Resolution Committee formed in the National Consumer Affairs Center of Japan provides ADR services relating to important consumer disputes.</li> </ul>
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#### 7) Consumer Protection Law (Class Action)

Country	Laws
Malaysia	N/A
Singapore	<ul style="list-style-type: none"> <li>▶ Under <b><u>the Consumer Protection Fair Trading Act</u></b>, a specified body may apply for the court (i) to make a declaration that the practice (to be) engaged in by a supplier is an unfair practice and (ii) to grant an injunction restraining the supplier from engaging in the unfair practice. <i>[details to be researched]</i></li> </ul>
Thailand	<ul style="list-style-type: none"> <li>▶ Under <b><u>the Consumer Protection Act</u></b>, the Consumer Protection Board may appoint consumer protection officials who institute legal proceedings in the court against the persons infringing consumers' rights. <i>[details to be researched]</i></li> </ul>
Vietnam	<ul style="list-style-type: none"> <li>▶ <b><u>The Consumer Protection Law (Drafted)</u></b> will provide that the consumer protection association has the right to initiate a lawsuit to protect legitimate rights and interest of consumers when all the following conditions are met: (i) the association has been operating for at least 5 years at the time of initiation of the lawsuit; and (ii) the lawsuit involves at least 100 consumers.</li> </ul>
People's Republic of China	<ul style="list-style-type: none"> <li>▶ N/A <i>[details to be researched]</i></li> </ul>
The Philippines	<ul style="list-style-type: none"> <li>▶ <b><u>Rules of Court</u></b> provides that class action is available when the subject matter of the controversy is one of a common or general interest to many persons, and the parties are so numerous that it is</li> </ul>

	impracticable to bring them all before the court.
<b>South Korea</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Basic Act on Electronic Commerce</u></b> stipulates the collective ADR service and provides that (i) the Settlement Commission may receive a request from the consumer or enterpriser, other than the body involved in the collective ADR, to be included in that collective dispute resolution and (ii) the Settlement Commission may, if the enterpriser accepts the contents of the collective dispute resolution by the Settlement Commission, recommend a compensation plan to be drawn up for the victimized consumer.</li> </ul>
<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ Under <b><u>the Consumer Contract Act</u></b> and <b><u>Act against Unjustifiable Premiums and Misleading Representation</u></b>, qualified consumer organizations may demand business entities that violate or are likely to violate the regulations to stop or prevent such acts on behalf of general consumers.</li> </ul>

#### 8) Protection of Consumer (Personal) Information

<b>Country</b>	<b>Laws</b>
<b>Malaysia</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Personal Data Protection Bill</u></b> is still pending.</li> </ul>
<b>Singapore</b>	<ul style="list-style-type: none"> <li>▶ Personal information is protected by individual laws such as <b><u>the Computer Misuse Act</u></b>, <b><u>Telecommunication Act</u></b>, or by customary laws. <i>[details to be researched]</i></li> </ul>
<b>Thailand</b>	<ul style="list-style-type: none"> <li>▶ N/A <i>[details to be researched]</i></li> </ul>
<b>Vietnam</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Law on E-transaction</u></b> provides that agencies, organizations and individuals are not allowed to use, provide or disclose information on personal secrets or information of other agencies, organizations and individuals that they access or control in e-transactions without the latter's consent, unless otherwise provided by law.</li> <li>▶ <b><u>The Law on Information Technology</u></b> has detailed provisions regarding acquisition, use and disclosure of personal information in a network environment.</li> </ul>

	<ul style="list-style-type: none"> <li>▶ <b><u>Circular No. 09/2008/TT-BCT</u></b> requires (i) disclosure of personal information protection policy, (ii) consent by customers for collecting and using personal information, and (iii) separate step for asking for consumers' consent.</li> </ul>
People's Republic of China	<ul style="list-style-type: none"> <li>▶ <b><u>The Personal Information Protection Law</u></b> is still pending. <i>[details to be researched]</i></li> </ul>
The Philippines	<ul style="list-style-type: none"> <li>▶ <b><u>DTI Department Administrative Order No. 08, Series of 2006 "Prescribing Guidelines for the Protection of Personal Data in Information and Communications System in the Private Sector"</u></b> provides that (i) access to personal data in an information and communications system shall only be authorized in favor of the individual or entity having a legal right to the possession or the use of the file and solely for the authorized purposes, (ii) any person who obtained access to personal data in an information and communications system shall not convey to or share the same with any other person, and (iii) the guidelines apply to the processing of all types of personal data whether such data refers to any natural or legal person.</li> <li>▶ <b><u>The Data Privacy Law</u></b> will be filed again in the next Congress. <u>The new set of legislators will assume office in July 2010.</u></li> </ul>
South Korea	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on Promotion of Information and Communication Network Utilization and Information Protection</u></b> (i) requires providers of online information to obtain users' approval before collecting and using their personal information and (ii) provides that no provider of information and communications services, with the exception of the consent of the relevant party, shall utilize the personal information or provide it to any third person.</li> <li>▶ <b><u>The Act on Protection of Personal Information maintained by Public Agencies</u></b> regulates handling and management of private information by public agencies.</li> </ul>

<b>Japan</b>	<ul style="list-style-type: none"> <li>▶ <b><u>The Act on the Protection of Personal Information</u></b> provides duties of entities handling personal information and rights of persons who are original owners of personal information. Under the Act, a business entity handling personal information shall (i) specify the purpose of using personal information, (ii) not handle personal information beyond such purpose, (iii) not acquire personal information by deception or other wrongful means, (iv) not provide personal information to a third party without prior approval of the person, etc.</li> </ul>
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9) Protection of Information of Businesses from Disclosure

<b>Country</b>	<b>Laws</b>
<b>Malaysia</b>	▶ N/A
<b>Singapore</b>	▶ <i>[details to be researched]</i>
<b>Thailand</b>	▶ <i>[details to be researched]</i>
<b>Vietnam</b>	▶ <b><u>The Law on E-transaction</u></b> provides that agencies, organizations and individuals are not allowed to use, provide or disclose information on personal secrets or information of other agencies, organizations and individuals that they access or control in e-transactions without the latter's consents, unless otherwise provided by law.
<b>People's Republic of China</b>	▶ <i>[details to be researched]</i>
<b>The Philippines</b>	▶ <b><u>DTI Department Administrative Order No. 08, Series of 2006 "Prescribing Guidelines for the Protection of Personal Data in Information and Communications System in the Private Sector"</u></b> is applicable also to personal data of legal persons.
<b>South Korea</b>	▶ N/A
<b>Japan</b>	▶ N/A

10) Specific Regulations on EC Business (Permit, License, Registration, etc.)

Country	Laws
Malaysia	▶ N/A
Singapore	▶ <i>[details to be researched]</i>
Thailand	<p>▶ Generally a person or an entity doing business in Thailand is required to apply for commercial registration under <b><u>the Commercial Registration Act 1952</u></b>.</p> <p>▶ If the <b><u>Direct Sales and Direct Marketing Act</u></b> is applicable to e-commerce, EC businesses are required to be registered. <i>[details to be researched]</i></p>
Vietnam	<p>▶ <b><u>The Law on Information Technology</u></b> provides that Vietnamese organizations and individuals that use domain names ending in ".vn" must have a domain name registration and that organizations and individuals do not use such domain names must notify to the Ministry of Post and Telecommunications (currently the Ministry of Information and Communications) the following information:</p> <ul style="list-style-type: none"> <li>(i) name, operating licenses, certificates of business registration or license to open a representative office;</li> <li>(ii) number, date and place of issuance of identity cards;</li> <li>(iii) address of head office of the organization or permanent residence of the individual;</li> <li>(iv) telephone and fax numbers, e-mail address; and</li> <li>(v) the registered domain name.</li> </ul>
People's Republic of China	<p>▶ Under <b><u>the Regulation on Internet Information Service</u></b>, establishment of websites requires a permit (if websites are for commercial purposes) or registration (if websites are for non-commercial purposes). <i>[details to be researched]</i></p>
The Philippines	<p>▶ <b><u>Implementing Rules and Regulations of the E-Commerce Act</u></b> provides that the Department of Trade and Industry (“DTI”) shall establish a voluntary listing system for all businesses or entities involved in electronic commerce. The list of electronic</p>



	commerce entities shall be maintained by the DTI and made available electronically to all interested parties.
<b>South Korea</b>	<p>▶ <b><u>The Consumer Protection Act on Electronic Transaction</u></b> provides that a distance seller shall notify each of the following set by the Presidential Decree to the Fair Trade Commission or the Mayor/Province Governor.</p> <p>(i) Trade name (in the case of a corporation, the name and ID number of the representing director shall be included), address and phone number</p> <p>(ii) E-mail address, the Internet domain and host server address</p> <p>(iii) Other necessary elements for confirming the identification of the businessman prescribed by the Presidential Decree.</p>
<b>Japan</b>	▶ N/A

For Singapore, Thailand, and the People's Republic of China in the ten charts above, data collected by the work group in 2008 were applied and no updates made afterwards.

### (3) Comparison Overview – Country by Country

The comparison highlights the following characteristics of each country.

Korea started working with the consumer protection in the e-commerce area relatively early and enacted a consumer protection law specialized for e-commerce in 2002. Among other countries, Korea is the only country to have such law.

In Malaysia, currently there is no personal information protection law, and the Consumer Protection Act was just amended in 2007 so as to be applicable to e-commerce. Consumer protection in e-commerce seems to still be in the early stage.

Vietnam appears to be in a similar situation to Malaysia. The Law on Information Technology and the Law on Electronic Transaction were enacted after 2007, and the development of a legal system relating to e-commerce is fully in progress at the moment. The current Ordinance on Consumer Protection is considered to provide insufficient protection for consumers, and it is desired that the new Consumer Protection Law be enacted as soon as possible.

In the Philippines, e-commerce consumer protection is not provided in a law or act

but in the administrative orders. However, the Electronic Commerce Act of 2000 provides that, in general, the provisions of the Consumer Act also apply to e-commerce concerns of consumers. The administrative order on e-consumer protection was issued to prescribe certain rules and regulations to protect consumers who are transacting over the internet. Similarly, protection of personal information is covered only by an administrative order as well, and thus prompt enactment of the Data Privacy Law is desired.

In Japan, though there is no comprehensive consumer protection law for e-commerce different from Korea, the combination of the conventional legal framework for consumer protection and individual legislations concerning e-commerce establish a certain level of consumer protection. In addition, further enhancement of protection was conducted such that proceedings similar to class action and cooling-off applicable to e-commerce were prepared recently. It is also a characteristic of Japan that the personal information protection law with relatively thorough coverage was enacted at an early date, namely in 2003.

#### (4) Comparison Overview – Issue by Issue

Through the comparison, we can see the following similarities and differences of each country's legal system in individual issues.

##### a) Advertisement and Provision of Information

It is common to all countries that business entities are required to provide appropriate and sufficient information to consumers and that misleading or deceptive advertisements are prohibited. However, the interpretation of the words “misleading” or “deceptive” and remedies or relieves available to consumers in case such unfair advertisement is conducted may differ from country to country. In this regard, it is desirable to expand the scope of investigation and comparison to actual practices of these legal systems.

##### b) Conclusion of Contract

As consumers tend to make an offer or acceptance of contract with insufficient awareness or through an error or mistake in e-commerce transactions, Vietnam, the Philippines, Korea and Japan require business entities to provide consumers with an

opportunity to confirm and amend the contents of the offer or acceptance prior to the conclusion of the contract. In Malaysia, there are no such explicit requirements. However, as an exercise of reasonable care or use of agreed procedure is required in order to deem an electronic message received from a sender as based on his/her true intention, business entities may be motivated to provide consumers with such an opportunity of confirmation to prove that they have exercised necessary care.

c) Cooling-off

It is only Korea that has an express provision of cooling-off applicable to e-commerce. However, though not having a cooling-off itself, Japan provides consumers with a right to terminate an e-commerce contract under certain conditions. The Philippines require e-commerce businesses to provide a cooling-off system although the specific terms are not prescribed by the government. E-commerce businesses are required to provide consumers information on the terms of their cooling-off system.

The other countries do not have a mandatory cooling-off system relating to e-commerce.

d) Contents of Contract

In the Philippines and Korea, any contract clause that exempts business entities from damage compensation obligations are deemed to be unfair and cannot be recognized as valid or enforceable. Japan has established a certain limit on such exemption, though not a total prohibition.

While there exist no provisions relating to unfair contract terms including prohibition of exempting business entities' liabilities in current legislations of Malaysia, it intends to amend the Consumer Protection Act so as to include provisions relating to unfair contract terms.

In Vietnam, the Civil Code generally regulates unfair contract terms.

e) Performance of Contract

Malaysia and the Philippines have specific provisions on business entities' liabilities relating to the quality of goods or services to be supplied under their respective consumer protection laws.

Regarding safety of products, Malaysia has relevant provisions in the Consumer

Protection Act, and Japan has enacted a law specialized for product liability.

However, it is thought that many parts of this area of legal system are dealt with in a civil code, contract law or any other general laws, and thus it is difficult to simply compare the provisions in consumer protection laws and to derive certain conclusions from such comparison. We need to closely examine the issues such as (i) how and to what extent liable business entities are relating to the quality and safety of goods or services as general obligations under contracts in each country or (ii) if there are any additional liabilities to be imposed on business entities for the purpose of consumer protection.

f) Dispute Resolution and Class Action

It is difficult to compare each country's dispute resolution system generally here. However, we can see that all countries have established complaint handling or ADR systems that are easier to access by consumers than lawsuits. In addition, Vietnam and the Philippines require business entities to set up an internal dispute resolution system for the protection of consumers.

Regarding class actions, the Philippines have established them as a kind of general litigation proceedings. Though there is no such proceeding in other countries, Korea and Japan have prepared respectively a collective ADR system and an injunctive relief to be initiated by qualified consumer organizations.

g) Protection of Information

Only Japan has a comprehensive personal information protection law. In Malaysia, there is no regulation relating to personal information protection though the Personal Data Protection Bill is currently pending. Also in the Philippines, a comprehensive law is being worked out in Congress. Vietnam, the Philippines and Korea provide protection by special laws or orders. However, in Vietnam and Korea, only the information obtained through the network environment is given protection. On the other hand, Japan provides protection not only to such information, but also to information obtained outside the network environment. While in Korea and Japan only information relating to living individuals is protected and information relating to legal persons is not protected, Vietnam and the Philippines include not only information relating to individuals, but also information

relating to legal persons in the scope of protection. However, we need to separately consider if such protection provided to legal persons would prevent a CALO from sharing business entities' information with other CALOs, publicly disclosing a specific business entity's information or reporting such information to the police or any other competent authorities.

#### h) Specific Regulations on e-Commerce

Korea has a substantial regulation relating to conducting e-commerce business (i.e. notification to governmental institutes), and which may be considered as the other side of careful protection provided by the consumer protection law specialized for e-commerce.

In Vietnam, there is a distinctive regulation by which business entities are required to make a notification to the Ministry of Information and Communications depending upon the use of national domain names.

In any event, it is unknown if the ICA-Net or a CALO could obtain cooperation from such governmental institutes having collected information relating to e-commerce business entities.

#### (5) Conclusion

As described in the comparison chart and above, legal systems relating to e-commerce vary from country to country depending upon the progress or development of e-commerce, government's policies, legal system relating to other areas, and so forth. In addition, even though each country's law establishes similar systems or institutions or provides similar regulations, there may be a case where the actual practices are totally different from each other. Therefore, we need a more in-depth comparison based on further investigation.

Though we have compared only five countries here, it is indispensable for us to expand the scope of the comparison to other countries in order to realize the installation and smooth operation of the ICA-Net and further to consider the harmonization of legal systems relating to consumer protection in the area of East Asia.

For that purpose, it is desirable that more and more countries share such purpose and actively take part in the future investigation, exchange of information and discussion.

## **2. Demonstration Experiment of ICA-Net**

### **2.1. Consumer Organizations' Expectations regarding Online Consumer Redress**

#### **(1) Background and Objectives**

The Internet has brought business to the doorsteps of consumers across the globe. The interactive nature of online business (which is an important component of electronic commerce) in terms of providing instant response and eliciting responses is a unique quality of the medium. Online business is sometimes considered to have a broader scope because it not only comprises the Internet, e-mail, and wireless media, but also includes management of digital data of consumers and electronic customer relationship management (ECRM) systems.

Apart from business management aspects, online business requires an adaptable framework for consumer protection (for consumers to build confidence and trust) that is subject to ongoing review and modification in light of changing technologies and market practices. Given the global reach of online businesses, the practices being followed in protecting the interests of consumers should be consistent with approaches to consumer protection agreed to by the international community. As Internet usage continues to expand, it has become increasingly necessary to design efficient mechanisms for resolving Internet disputes because traditional mechanisms, such as litigation, can be time-consuming and expensive and may raise jurisdictional problems, hence the online dispute resolution (ODR) system.

Consumers International (CI), a world federation of consumer groups working together with its members, serves as the only independent and authoritative global voice for consumers. With over 220 member organizations in 115 countries, CI is building a powerful international movement to help protect and empower consumers everywhere.

CI has been at the forefront of consumer activism in the area of e-commerce. CI has contributed extensively to the development of OECD guidelines for consumer protection in e-commerce. It has also carried out research on consumer satisfaction, data protection, and privacy with regard to Internet shopping as well as working on other important issues such as alternative dispute resolution in Internet transactions.

## (2) CI and Global Business Dialogue on E-Commerce (GBDe)

CI is closely working with the Global Business Dialogue on e-Commerce (GBDe) in promoting the International Consumer Advisory Network (ICA-Net) through the Consumer Advisory Liaison Offices (CALO) in ASEAN and APEC countries. In 2003, the GBDe reached an agreement with Consumers International (CI) on Alternate Dispute Resolution (ADR) Guidelines. To this affect, Dr. Yong-Kyung Lee, the then Global Chair of GBDe and Ms. Anna Fielder, Consumers International Director-Office for Developed and Transition Economies, signed an agreement on November 6, 2003. This is the first joint document concluded between private enterprises and consumers to work together.

The ADR Guidelines offer recommendations to ADR providers on the need for speed, accessibility, impartiality and transparency of the ADR process. These guidelines have been utilized as a standard of international ADR in Singapore, Taiwan, Korea, Thailand, Malaysia, Japan, etc. In detail, it consists of guidelines for merchants who want to sell to consumers in a global market. It includes prescriptions for ADR organizations as to what consumers and businesses will expect from dispute resolution providers, and recommendations to governments on what they need to do to ensure that their citizens will be protected in cross-border transactions.

## (3) CI and ICA-Net

Since 2008, CI has made its comments on the proposed International Consumer Advisory Network (ICA-Net) through the Consumer Advisory Liaison Office (CALO) for its piloting in some of the selected countries in Asia. CI also facilitated CCIG in promoting the implementation of ICA-Net through initial discussions with government and consumer organizations in Malaysia.

CI is pleased to see the progressive approach being adopted by CCIG in implementing ICA-Net in the ASEAN/APEC regions and thereafter to connect the ICA-Net with ECC-Net in Europe. CI has provided its cooperation in initiating meaningful discussions with CI members (in the ASEAN region) to be as CALO candidates in their respective countries, so as to support CCIG in its progressive approach of extending ICA-Net to all countries. In addition, CI has even contributed to ICA-NET by providing some cases during the pilot project at the cross-border level

on dispute resolution, amongst them, inter alia:

1. Domain Registration: Thai Consumer filed this complaint over Australian domain name registration.
2. Not delivered after payment: A Taiwanese consumer purchased goods from a motorcycle dealer in the UK. The consumer lost the contact with the business.

With this collaboration, CI hopes to strengthen country legislations in cross-border transactions, while emphasizing the role of consumer organizations in consumer protection measures through:

1. Capacity building and training;
2. Complaint handling and facilitation services;
3. Database management; and
4. Influencing public policy.

CI is of the opinion that a global toll free number for consumer access would be one of the best measures to help consumers to access dispute/complaint resolution from any place in the world. This would help consumers to register a complaint.

Similarly, CI is of the opinion that the Internet would be a useful means for disclosure of information on a complaint settlement to a third party. As consumers use social media to share experiences and learn about others, CI is also of the view that ICA-Net should start working towards the creation of an online forum for holding discussions and posting information on electronic transactions. Similarly, CI feels that the ICA-Net must appoint multi-lingual legal advisors for cross-border legal coordination in cases arising from e-commerce issues. These advisors should also play an advisory and counseling role so that the ICA Net can achieve stable and effective operation in its role resolving complaints in cross-border e-commerce.

Governments too have a significant role to play in addressing cross border e commerce transactions in respect of providing an enabling environment through policy framework, monitoring, exchange of information amongst governments and financial support for a mechanism to be put in place to address complaints and problems of cross border e commerce transactions.



#### (4) Consumers' Expectations on E-commerce

To understand consumers' expectations concerning online business-to-consumer (B2C) dispute resolution processes as well as to gain updated information on e-commerce in the the Asia Pacific region, CI carried out a random survey in early 2010 amongst its members in selected countries .

The questionnaire for the survey was designed to provide information about:

- \* relevant practices of ODR
- \* type of ODR provided
- \* languages in which ODR is offered
- \* source of funding for ODR
- \* consumer confidence in e-commerce
- \* consumer organizations' preferences and expectations
- \* role of government and industry
- \* best practice models
- \* maintenance of ODR

#### (5) Current Status of Online Consumer Redress in Different Countries

The survey provided information on the procedural and practical implementation of measures of ODR in each country. This section presents the main findings from the survey responses from Fiji, India, Indonesia, Malaysia, and the Philippines.

The following table summarizes the relevant practices of ODR in these countries:

**Table 2.1. Status of ODR in Each Country**

<b>ODR Issue</b>	<b>Fiji</b>	<b>India</b>	<b>Indonesia</b>	<b>Malaysia</b>	<b>Philippines</b>
<b>Process of carrying out ODR</b>	Online dispute resolution is yet to take a foothold in Fiji.	Through emails and video conferencing	No ODR practice as yet	There is no dedicated/ comprehensive ODR system but online channels/media are employed as a communication means to receive complaints	Through phone calls/ SMS by consumers and third parties
<b>Relevant practices of ODR</b>	Not applicable	Grievance lodging based on prescribed format, negotiation, mediation and arbitration	Not applicable	Not applicable	Complaint handling for arbitration and mediation
<b>Who undertakes ODR</b>	Not applicable	Independent service providers and resolution centers provided by the industry itself	Not applicable	Consumer organizations (FOMCA/ NCCC), Ministry of Domestic Trade, Co-operatives and Consumerism (e-Aduan), Communications and Multimedia Consumer Forum of Malaysia (CFM), and Communications and Multimedia Content Forum (CMCF) of Malaysia.	- Cebu Chambers of Commerce Inc. and Cebu Mediation Foundation Inc. forged a MOA in 2004 to develop a facility called Philippine Online Dispute Resolution (PH-ODR). - Philippines Department of Trade and Industry (DTI).
<b>Type of ODR provided</b>	Not applicable	Mediation, arbitration, and negotiation	Not applicable	ODR is not yet employed to handle such processes as the competency of the parties involved is still low.	Arbitration and mediation
<b>Most prevalent ODR</b>	Not applicable	Mediation, arbitration	Not applicable	ODR is only used at the communication stage of dispute resolution.	Mediation
<b>Languages in which ODR is offered</b>	Not applicable	Two (English and Hindi)	Not applicable	Four (Malay, English, Mandarin, and Tamil)	Two (Filipino and English)
<b>Source of funding for ODR</b>	Not applicable	Service charges paid by consumers	Not applicable	All ODRs are funded by governmental allocations through various regulatory bodies.	Government and Chambers of Commerce
<b>Key institutional arrangements</b>	Not applicable	ODR maintained by industry	Not applicable	Consumer organizations albeit	Facilities run by

<b>in ODR performance and their independence</b>		is a service provision. Industry representatives control it.		funded by government are working effectively at the national level. CFM and CMCF are industry regulators but are overly controlled by industry representatives.	government and Chambers of Commerce are independent of each other.
<b>Priority ODR issues requiring coordination/intervention to ensure credibility and consumer confidence in online business (order of priority 1-7)</b>	<ol style="list-style-type: none"> <li>1. Affordability (Internet, ICT access)</li> <li>2. Availability for consumer use</li> <li>3. Effectiveness of the system</li> <li>4. Security</li> <li>5. Privacy</li> <li>6. Transparency</li> <li>7. Independence and impartiality</li> </ol>	<ol style="list-style-type: none"> <li>1. Effectiveness of the system</li> <li>2. Availability for consumer use</li> <li>3. Transparency</li> <li>4. Independence and impartiality</li> <li>5. Affordability</li> <li>6. Security</li> <li>7. Privacy</li> </ol>	<ol style="list-style-type: none"> <li>1. Availability for consumer use</li> <li>2. Affordability (economically/geographically)</li> <li>3. Security</li> <li>4. Transparency</li> <li>5. Effectiveness of the system</li> <li>6. Independence and impartiality</li> <li>7. Privacy</li> </ol>	<ol style="list-style-type: none"> <li>1. Security</li> <li>2. Availability for consumer use</li> <li>3. Effectiveness of system</li> <li>4. Privacy</li> <li>5. Independence and impartiality</li> <li>6. Transparency</li> <li>7. Affordability</li> </ol>	<ol style="list-style-type: none"> <li>1. Effectiveness of the system</li> <li>2. Availability for consumer use</li> <li>3. Transparency</li> <li>4. Independence and impartiality</li> <li>5. Affordability</li> <li>6. Security</li> <li>7. Privacy</li> </ol>
<b>Priority issues requiring coordination by government</b>	Affordability and Availability for consumer use	Affordability, availability for consumer use	<ul style="list-style-type: none"> <li>• Security</li> <li>• Transparency</li> <li>• Effectiveness</li> </ul>	All issues	All issues
<b>Identifiable best practice for ODR</b>	Not applicable	Arbitration, mediation, and complaint handling	In the telecom sector, consumers are able to get pulse refunds after mediation.	Currently, there is no best practice for ODR in Malaysia.	Not yet
<b>Publication of case results</b>	Not applicable	No such practice yet	Not applicable	Respective ODR service providers.	CCCI mediation desk and the Philippines Department of Trade and Industry (DTI)
<b>Cost to consumer</b>	Not applicable	The fee charged depends on the amount of money involved in the dispute.	Not applicable	Not applicable	No information

(6) Consumer Confidence in E-commerce

Consumer confidence is necessary for realizing the full potential of e-commerce. Consumers must have confidence that the business whose product they are about to purchase is reliable and that the product being offered in the global market place is worth the price paid. Gaining and maintaining that confidence is especially important when the consumer and business(es) do not share commonalities of geography, culture, and/or legal framework. Some companies offering online services always understand this expectation and continually strive to exceed it. Other companies including many newer online merchants may have good intentions, but lack the skills or experience to turn the consumer's expectation into a reality. There are few companies that intentionally seek to exploit this consumer expectation.

Identifying these companies in a virtual world is a difficult task - and that was the subject of focus in CI's survey on consumer confidence in e-commerce where members gave feedback that can generally be grouped into three key ideas:

1. Codes of conduct for online businesses:

All businesses and/or governments have to develop codes of conduct, guidelines, principles, best practices, etc. for online businesses. Details of such codes/guidelines/principles related to safeguarding privacy, data protection, ensuring authenticity, and others should aim to protect consumers' rights. The opinion that they may be included on the website for consumers to review them before making an online purchase was voiced.

2. Trustmarks:

To increase consumer confidence that a company will act in accordance with a code of conduct or best practices, a third-party "trustmark" should be used. The concept is that by displaying the "trustmark," the company indicates that it is subject to external oversight. The company would not be allowed to display the third-party mark if the company's actions are inconsistent with what is contained in the "code of conduct" or similar document. "Trustmarks" are most useful when they have strong brand recognition and credibility among consumers.

3. Dispute resolution:

Consumer confidence relies heavily on the belief that any disputes arising out of a transaction will be settled quickly and fairly either by the company directly or

through other means.

It was felt that in a situation where disputes cannot be resolved directly between the consumer and the company, the merchant and consumer must resort to other means. These may include appeals to consumer protection agencies; recourse to courts; or use of alternative dispute resolution systems involving an independent third party to provide neutral, extra-jurisdictional processes that permit both the consumer and the company to resolve complaints involving cross-border transactions. Under such a system, if a consumer has a complaint about an electronic transaction that cannot be resolved through discussion with the company, the consumer could resort to an independent third party to resolve cross-border disputes through mediation/negotiation/arbitration. The third party would then discuss the dispute with both sides in an effort to resolve it before rendering a judgment. If the third party decides in favor of the consumer and the business refuses to implement the decision, the consumer may then seek redress through the appropriate judicial system.

#### (7) Consumer Organizations' Expectations regarding Online Redress Mechanisms

The availability of effective redress can build consumer confidence in transactions by influencing the weighting consumers give to different assumptions when faced with imperfect information. Accessibility to redress mechanisms may induce consumers to make more positive assessment of the risks of transacting with a supplier they do not know or trust (or have imperfect information about) because they are aware they can seek a remedy if things go wrong. The success of an electronic transaction will depend on whether it offers comprehensive complaint resolution through online redress mechanism that has the benefits of existing consumer protection laws (fairness, enforceability, etc.) coupled with the flexibility of more non-traditional redress approaches (cost-effectiveness, timely response, etc.). CI's survey outlined this aspect wherein members gave their feedback highlighting the following issues:

##### a. Fairness/Independence/Impartiality:

It was felt that a redress mechanism must be perceived as treating both parties at least as equitably and fairly as a formal government administrative or legal procedure. The redress mechanism must have structure, rules, and procedures that

ensure that all parties' rights are protected and that every aspect of the mechanism operates with regard to the parties' rights to due process.

b. Visibility:

Consumer organizations expressed the opinion that consumers must be fully knowledgeable of the existence of redress mechanisms. While it is desirable for consumers to have knowledge of these systems prior to purchase, it is critical that this information be available at the time that a dispute arises.

c. Availability for use by consumers:

The redress mechanism must be readily accessible to consumers when a dispute arises. Accessibility means not only that the mechanism can be called upon when needed, but also that there are no unreasonable barriers to access (such as unreasonable costs).

d. Affordability/Cost-effectiveness:

The cost of a redress mechanism should be significantly less for both consumers and businesses than commensurate formal administrative or legal actions. This is particularly true where formal actions involve dispositions, hearings, legal representation, and cross-border logistics.

e. Credibility:

Redress mechanisms can be more flexible and creative in finding solutions that satisfies both parties. Consumer protection agencies and/or the courts may offer only limited remedies in resolving disputes, particularly where law of regulations prescribes these remedies. Also, resolving disputes through ODR mechanisms will almost certainly reduce the number of cases that would otherwise be brought to agencies and the courts.

f. Effectiveness:

To be effective, redress mechanisms must resolve disputes quickly if they are to meet the needs of consumers, businesses, and governments. In contrast, courts and consumer protection agencies may not be as responsive. Quick resolution however, must take into account the need for the parties to provide (or the mechanism to collect) sufficient information upon which to base a resolution.

g. Finality:

The ODR mechanism should, to the greatest extent possible, ensure that resulting

decisions fully and finally resolve individual consumer disputes.

h. Enforceability:

The ODR mechanism should ensure that decisions rendered and agreed to by the parties are quickly and completely honored.

i. Transparency:

The service providers of ODR should provide a lot of information for consumers, if any, on their governing structure or funding sources. Publication of case results provides transparency regarding the track record of the provider.

(8) Consumer Organizations in Providing ODR Services

On asked whether consumer organizations are involved in providing ODR services in each country, there was a moderate level of engagement with consumer organizations in most countries. In Indonesia, Fiji, and Malaysia, consumer organizations are involved in providing information for inquiries as well as in complaint handling services. In India, consumer organizations are involved in complaint handling services.

(9) Government in Providing ODR Services in Respective Countries

On the role of the government in providing ODR services, the following table shows the responses from different countries:

<b>Fiji</b>	With the increase in e-commerce and online interactions, the government should consider ODR as a cost-effective system. The government is geared towards using ICT to improve services. ODR can offer a cost-effective alternative to conventional dispute resolution especially for consumers in Fiji who cannot gain direct access to services in the country's main urban centers where these are concentrated. It would preferable if the government funded ODR services to ensure crosscutting benefits.
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<b>India</b>	There should be a proper law governing ODR. The government should be more proactive towards e-commerce by entering into bilateral understandings with other countries, especially from where more products are bought online, to avoid jurisdiction issues in case of problems and thus benefiting online shoppers at large. Apart from the above, the government should start a center on its own, offering ODR services and extending financial support to other agencies who work on ODR to strengthen the system.
<b>Indonesia</b>	The government should regulate each sector by developing ADR and ODR services. In addition, the government should provide a state/district budget for respective government agencies to provide the service.
<b>Malaysia</b>	The government should: Approve and monitor standards of operations; Encourage and provide incentives for use of ODR; Provide funding to ensure independence; Ensure adequate funding for operations and training of personnel.
<b>The Philippines</b>	The government should implement rules and regulations for governing ADR and ODR in the country.

(10) Industry in Providing ODR Services

On the role of the industry in providing ODR services, the following table indicates the responses from the respective countries:

<b>Fiji</b>	It would be good if businesses provide at least some in-house complaint and dispute handling services via their call centers or through online facilities.
<b>India</b>	An in-built online dispute redressal mechanism should be made available by industry to resolve issues. This will improve consumer confidence. In terms of funding, it was the opinion was given that independent ODR services should not be funded by the industry, as there is every possibility of the service being industry biased.
<b>Indonesia</b>	The Industry Association can develop a division to provide ODR



	service. Apart from the above, industry funding should be provided to ensure independent/professional personnel in ODR service.
<b>Malaysia</b>	Industry should ensure free, consumer-friendly ODR services. In addition, they should assist SME to utilize ODR services.
<b>The Philippines</b>	Industry should adopt a non-conformational approach in providing ODR.

(11) Recommendations

Online consumer redress can be approached from many different vantage points. The report has adopted an assessment approach to study existing practices in different countries as well as to understand consumer organizations' expectations in providing ODR services. Other than conventional redress through ordinary court procedures, the focus is on taking stock for updated information from all countries to see how online business-to-consumer (B2C) dispute resolution processes are conducted. Rather than a theoretical description, the report aimed primarily to examine how alternative ways of dispute resolution work is in practice for their consumers. Overall, the position of online consumer redress in the countries reported seems unsatisfactory because there is little government intervention to protect consumers in e-commerce transactions. In almost all the countries, there are a number of businesses involved in providing goods or services to consumers with no statutory protection in having online redress for their claims. ODR in most cases is provided by industry and there can be procedural delays and insufficient compensation for the effective protection of consumers. Experience shows a large variation in the way industry handles complaints through the informal or formal internal complaint handling schemes within their limits.

This variation is caused by the absence of uniform regulations and standards. All countries should have comprehensive regulation for internal complaint handling schemes of industry/businesses so that they are regulated. Best practice codes for complaint handling procedures should be developed either by public institutions or by business or consumer organizations. In practice, the importance of such best practices codes is significant, as they are adhered to by numerous traders. In particular, transparency, independence, and accountability remain essential components of any acceptable ODR scheme. Due process and the impartiality and competence of

“neutrals” are also critical components of a good ODR service.

In addition to the above, it is recommended that practical measures be adopted by governments to introduce innovative techniques and online technologies to the process of providing consumer redress. To ensure accountability, it is recommended that civil society be involved in administering complaints in order to highlight any systemic industry problems.

Therefore in short, to be useful to consumers, ODR schemes need to:

- \* cover all types of B2C disputes;
- \* be offered at no or low cost to the consumer;
- \* be available for initiation by consumers;
- \* be visible, accessible, and easy to use;
- \* operate in a timely fashion, and produce results that satisfy the consumer’s need for redress.
- \* and finally, to be optimally effective.

ODR services should be able to:

- \* accommodate linguistic diversity;
- \* be scaleable and coordinate with each other so as to optimize the “fit” between the dispute and the ODR service; and
- \* offer appropriate levels of security for online communications

In the absence of an international judicial system similar to that existing at the domestic level, some kind of recognized standard and neutral oversight are needed in order for all of these goals to be achieved.

ODR providers need guidance when designing their services and both businesses and consumers need benchmarks by which to judge the various ODR services available to them. Moreover, governments need some assurance that this extra-judicial system of redress meets certain basic standards of justice, if they are to refer their consumers to ODR services.

## (12) ODR and ICA-Net

There is much scope for ICA-Net in bridging the digital divide in the region for increasing cyber security through development of the Information Society for the private sector to offer electronic commerce services in a secured manner. In

addressing ODR, CI is of the opinion that the following measures can strengthen the ICA-Net:

The following are the roles expected of each government:

1. Improved country legislation:

On par with off-line transactions, respective Governments should formulate new laws for e-commerce for addressing ODR. These legislations should be intended to ensure that consumers shopping online are no less protected than when buying from a shop or a catalogue. On this aspect, it is expected that ICA Net will be able to ensure consumers in the future (with the support of governments and businesses) through a more comprehensive manner :

- Fair business, advertising and marketing practices;
- Clear information about an online business' identity, the goods and services it offers and terms and conditions of any transaction;
- A transparent process for the confirmation of transactions;
- Secure payment mechanisms;
- Fair, timely and affordable dispute resolution and redress;
- Privacy protection; and
- Consumer and business education

2. Cross border transactions:

An urgent consideration should be given to the issue of online redress in cross-border situations. This can be done through bilateral and multilateral agreements between countries/ regions. As per the OECD recommendations 2007, the system to provide redress for overseas consumers should be organized and information about this should be effectively disseminated.

3. Successive reviewing and exchanging information regarding legal systems related to e-commerce in ASEAN and East Asia are needed towards future legal harmonization.

4. Building and supporting the ICA-Net so that it can achieve stable and effective operation in its role resolving trouble in cross-border e-commerce.

Role of consumer organizations:

CI is of the opinion that consumer organizations play a very important role in the ICA-NET as CALO for providing ODR services through following activities:

1. Capacity building and training:

CI aims to develop strong and effective consumer organizations which in turn play a very important role in capacity building of the general public and other stakeholders. This will have an impact on policy-making at national and global levels. This is achieved by building knowledge and skills through:

- \* training programmes
- \* technical assistance
- \* information networks, and
- \* exchange programmes

2. Complaints handling and facilitation services:

Consumer organizations play a very important role in handling complaints and in offering facilitation services. They will handle both in country as well as cross-country complaints from consumers for online transactions. As facilitators, they will be providing advisory, campaigning, lobbying, advocating, and representation roles.

3. Database management:

Consumer organizations should be involved in database management claims, complaints, and information and communication services.

4. Influence public policy:

Consumers International believes that consumer organizations play an important role in influencing public policy. This is especially true in terms of encouraging the government to commit to and support a CALO in the country.

5. Worldwide toll free number and consumer access:

A worldwide toll-free international access number would be of help consumers to have access from any place.

6. ICT usage:

Information communications technology - or technologies (ICT) is an umbrella term that includes all technologies for the communication of information. In modern days, the internet is the primary source for communication. It is through

the internet that consumers can be made aware of all the provisions of e-commerce to protect their interest in doing e-transactions. Similarly, ICT will be a useful means for disclosure of information on a complaint settlement to a third party.

7. Online forum:

An internet forum will help consumers to hold discussions and post information on electronic transactions.

8. Initiate online blog for raising consumer concerns:

A blog is a website, usually maintained with regular entries of commentary and descriptions. An online blog on ICA-Net will help consumers to post information that might be of interest to others in other parts of the world.

(13) Conclusion

The survey sought information on each country's experience in the implementation of available ODR services in their respective countries. Overall, the countries participating in the survey reported a poor experience in providing ODR services. There are significant gaps in the redress system, service implementation, and maintenance. India and the Philippines reported limited satisfaction with the quality of services being offered to consumers for online dispute resolution while Fiji, Indonesia and Malaysia reported major gaps in providing redress. With e-commerce rapidly growing, it is important that these gaps are identified to ensure the accessibility, fairness, efficiency, and effectiveness of online consumer redress. CI is sure that the survey results will also be useful in identifying areas for further research and development.

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## 2.2. Exchange of Opinions with EU

### (1) Introduction

As described in the previous report, the European Consumer Centres Network (ECC-Net)<sup>12</sup> is a successful example of cross-border complaint handling. To explore the possible cooperation between ECC-Net and the International Consumer Advisory Network (ICA-Net) and obtain better understanding of the European Union (EU) Directives regarding consumer protection and e-commerce, an in-depth study was conducted by an in-person interview with the European Commission (EC), the government of the United Kingdom (UK) and the ECCs. Also, ICA-Net was introduced to the above-mentioned entities as a new effort in ASEAN and East Asia. The report is described hereinafter.

### (2) ECC UK

ECC UK is operated by the Trading Standards Institute (TSI)<sup>13</sup> since 2008. In conformity with the rule of the ECC-Net, ECC UK is operated by an executive leader, a lawyer and two persons who handle complaints from consumers. As a new development, the member organizations of the ECC are making efforts to enhance cooperation with the law enforcement entities under the Consumer Protection Cooperation Regulation (CPCR)<sup>14</sup> specifically when handling fraudulent cases within the EU region. In reality, they often encounter difficulties in handling complaints which may lead to criminal cases.

ECC UK showed a keen interest in collaborating with ICA-Net after sharing information of the data of Japanese consumer complaints and complaints dealt with by ICA-Net.

### (3) The European Commission (EC)

#### 1) Partnership with the ICA-Net

The responsible persons of the EC showed their interest in ICA-Net and largely agreed on the cooperation. Actually, ICA-Net was introduced at an internal meeting of

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<sup>12</sup> [http://ec.europa.eu/consumers/ecc/index\\_en.htm](http://ec.europa.eu/consumers/ecc/index_en.htm).

<sup>13</sup> <http://www.tradingstandards.gov.uk/>.

<sup>14</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:364:0001:0011:EN:PDF>.

the ECCs as a new effort of ASEAN and East Asia. Therefore, ICA-Net should positively consider the method of building a partnership with ECC-Net.

On the other hand, the responsible persons of the EC expressed their concern about the funding issue because the EU basically bears one half of the operational cost of each ECC. And they pointed out the cooperation may conflict with its principle that ECC-Net only handles complaints arising within EU member countries. In the case of Norway and Iceland, the two nations are not EU member countries, so they signed a specific treaty with the EU before accession to ECC-Net. Switzerland, for instance, has not yet signed the treaty, so the complaints from Swiss consumers or complaints against Swiss businesses fall outside of the scope of ECC-Net's operation.

If ECC-Net and ICA-Net formally start a kind of partnership, this may contradict the rule mentioned above. In cases especially where the number of complaints increased between the EU regions and the ASEAN and East Asian regions, both the EU and the governments participating in ICA-Net may have to weigh up all the factors including funding issues, and then the both may require signing an agreement on the cooperation. This should not be seen as an obstacle, but rather as an opportunity to build upon both networks' capability through successful cases and to use them as the driving force.

## 2) Toward Full Harmonization of the Legal Systems in the EU

Currently, a minimum legal harmonization of the Directive on Consumer Rights was completed. However, some issues have not been resolved such as the cooling-off system. For example, the EC stipulates the minimum period of the cooling-off systems as X days, but some EU countries set the period at more than X days. Thus, the period differs depending on countries.

Therefore, the EU has begun reviewing and formulating the Directive on Consumer Rights<sup>15</sup> toward a realization of full harmonization despite the fact that some EU countries may have to reduce the scope of consumer protection. The aim of this ambitious goal is to eliminate the negative effects of differences in the legal systems and

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[http://ec.europa.eu/consumers/rights/docs/COMM\\_PDF\\_COM\\_2008\\_0614\\_F\\_EN\\_PROPOSITION\\_DE\\_DIRECTIVE.pdf](http://ec.europa.eu/consumers/rights/docs/COMM_PDF_COM_2008_0614_F_EN_PROPOSITION_DE_DIRECTIVE.pdf).



realize legal harmonization to promote cross-border businesses within the EU. If there are common legal systems in the region, businesses can save time and efforts of looking at laws and regulations of each EU nation.

(4) Global Business Dialogue on e-Society (GBDe)<sup>16</sup> Summit

The presentation of the concept and the cases handled by the Consumer Advisory Liaison Office (CALO) of ICA-Net attracted much interest at the Summit. Also, the participants shared a common understanding that most consumer complaints regarding e-commerce were not suitable for litigation and it is very difficult to regulate or create a rule regarding the problems of e-commerce. The details are described as follows.

Toward Collaboration with ICA-Net

According to the ECC France/Germany<sup>17</sup>, about seventy percent of complaints that the ECC France/Germany receives can be settled by bridging between complaint handling organizations. It is true that complaint handling organizations act as an intermediary, translate the complaint into English and send it to another complaint handling organization where the other party is located. The efforts of ECC-Net and ICA-Net proved that such flexible intervention is effective when handling cross-border e-commerce complaints because most complaints arise from misunderstanding, and cross-border complaints are particularly due to the language difference. And ECC France/Germany expressed their keen interest in cooperating with ICA-Net.

Fraudulent cases cannot be solved even if a consumer files a lawsuit especially when a party has already fled. To address fraudulent acts in the e-commerce market, there are challenges to establish cooperation with both domestic and international law enforcement entities. This is true in Europe and elsewhere. As described above, ECC has already started the efforts toward strengthening their cooperation with the law enforcement entities. ICA-Net should continue exchanging opinions and paying attention to their efforts.

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<sup>16</sup> <http://www.gbd-e.org/>.

<sup>17</sup> France and Germany are jointly operating the ECC France/Germany. <http://www.euroinfo-kehl.eu/>.

(5) The UK Department for Business, Innovation and Skills (BIS)<sup>18</sup>

BIS is a governmental organization which has a responsibility to formulate consumer protection policies in the UK with the Office of Fair Trading (OFT)<sup>19</sup> which has a responsibility to enforce the policies. As a part of the roles, BIS funds the ECC UK operation with the EU.

1) The Cooperation with the ICA-Net

BIS expresses a concern about funding. This shows the governments participating in ICA-Net will need to discuss with both the governments of ECC-Net and the EC regarding funding issues. But it also expresses that it is ideal if a government-to-government agreement is signed with regard to the cooperation.

2) A Full Harmonization of the Legal Systems

It seems that the UK is open to the idea of a full harmonization in general, but may not compromise on details because the coming new Directive may require the UK to reduce a level of consumer protection in laws and regulations of the UK. The largest consumer association in the UK is welcoming the full harmonization although some consumer groups expressed their concern on details.

(6) Final Remarks

1) Toward a realization of full harmonization of the EU directives (laws and regulations)

The EU has made efforts to establish a firm single market and completed the minimum harmonization of the legal systems for this purpose. As a next step, a full legal harmonization is now being prepared in the EU. It would be beneficial for both of the businesses and the consumers. In consideration of a full harmonization of the legal systems in ASEA and East Asia in the future, the ongoing efforts by the EU should be continuously studied.

2) The cooperation with the ICA-Net

The EC and the UK government support the cooperation with ICA-Net. Specifically, the members of the ECCs expressed their strong interest in collaborating

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<sup>18</sup> <http://www.berr.gov.uk/>.

<sup>19</sup> <http://www.offt.gov.uk/>.

with ICA-Net if disputes arise between the regions.

The governments together with the CALO of participating in ICA-Net should take this opportunity to deepen discussions with ECC-Net and actively exchange views on complaint handling, the code of conduct and the management method toward a fully-fledged cooperation with ECC-Net.

### **2.3. Outline of Demonstration Experiment and Case Example**

#### **(1) The Participating Organizations of the Pilot Project**

This pilot project has started in January 2009. The members of this working group, an observer of the 2008 workshop (SOSA, Taiwan and BBB, US & Canada) participated in the project as Consumer Advisory Liaison Office (CALO). The participants of the pilot project are as follows.

\* The members of this working group

Singapore : Consumers Association of Singapore (CASE)  
Malaysia : National Consumer Complaint Centre (NCCC)  
Thailand : Department of Business Development (DBD)  
Vietnam : Vietnam E-commerce and IT Agency (VECITA)  
Taiwan : Secure Online Shopping Association (SOSA)  
US & Canada : Better Business Bureau (BBB)  
Japan : EC Network  
Consumers International (CI)

\* Other related organizations

US: TRUSTe<sup>20</sup> and eBay<sup>21</sup>  
France: Forum des droits sur l'internet<sup>22</sup>  
Japan: Cabinet Office<sup>23</sup>,  
Ministry of Economy, Trade and Industry<sup>24</sup>,  
The Embassy of Japan in Kenya<sup>25</sup>,

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<sup>20</sup> <http://www.truste.com/>.

<sup>21</sup> <http://www.ebay.com/>.

<sup>22</sup> <http://www.foruminternet.org/> (written in French only) Forum des droits sur l'internet is specialized in handling complaints arising from e-commerce and Internet-related disputes.

<sup>23</sup> <http://www.cao.go.jp/index-e.html>.

<sup>24</sup> <http://www.meti.go.jp/english/index.html>.

<sup>25</sup> <http://www.ke.emb-japan.go.jp/>.

Japan Used Motor Vehicle Exporters Association<sup>26</sup> (JUMVEA)  
Japan Auto Appraisal Institute<sup>27</sup> (JAAI)

At the end of the 1st workshop in 2008, CALOs above agreed to adopt a community-style-platform for this pilot project which is designed and is being managed by Japanese entities (EC Network and ODR Room Network) when handling cross-border consumer complaints arising from e-commerce. At least one personnel of each CALO registers and uses the platform.

CALOs have handled eight cases since the start of the pilot project. Given such international network has never existed in East Asian and ASEAN regions, this pilot project was a milestone in protecting consumers and building a more secure and safer e-commerce market place. Although the number of cases is small, these cases offered many valuable insights for the paradigm of effective complaint handling of cross-border e-commerce. The details of eight cases are described in the next chapter.

## (2) Analysis of Cross-border Disputes Handled on ICA-Net

### Case 1: Misuse of BBB Trustmark

Residence of consumer: Japan  
Business location: China  
CALO involved: EC Network (Japan)

#### Summary:

A Japanese consumer ordered UGG boots, paid through Paypal but received counterfeits from China. Although he raised a complaint to Paypal, his case was unaddressed, so he filed a complaint to EC Network.

EC Network found the business was displaying BBB and TRUSTe marks and informed BBB of this matter. Since the use of the BBB trustmark was unauthorized, BBB's legal department sent this business an alert mail demanding that it remove the BBB mark immediately. All Trustmarks including BBB and Truste were removed from the site the next day.

EC Network attempted to find an appropriate complaint handling organization in China, but it could not. Considering the major changes in China's use of the Internet,

<sup>26</sup> <http://www.jumvea.or.jp/e/index.php>.

<sup>27</sup> <http://www.jaai.com/english/>.

we think it is increasingly necessary for ICA-Net to have a CALO of China. This case did not reach a settlement, but the action by BBB led to a near shut down of this business' website, and ICA-Net contributed to help prevent others from becoming the victim of the fraudulent business.

#### Case 2: Domain Name Registration

Residence of consumer: Thailand  
Business location: Australia  
CALO involved: EC Network (Japan), Consumers International (CI), Kuala Lumpur Office

##### Summary:

A Thai consumer filed a complaint to CI against an Australian domain name registration company regarding its charges and the transfer of his domain name. The company claimed the charge was valid, and the complainant also consulted a credit card company. He tried to transfer his domain to the other registrars, but he could not do so. When the consumer filed a complaint to the credit card company, he lost his domain name. EC Network consulted with the National Internet Registry in Japan about this case and found that this case should be solved based upon Transfer Dispute Resolution Policy (TDRP) proclaimed by ICANN. EC Network informed CI about TDRP.

EC Network and CI were able to exchange useful information. This case might not be applied to a dispute resulting from e-commerce, but EC Network was able to refer the consumer to appropriate institutions through CI. This case meets one of the primary purposes of ICA-Net that CALOs should provide the most effective means for solving disputes to consumers.

### Case 3: Negative Option

Residence of consumer: Japan

Business location: Japan, US

CALO involved: EC Network (Japan), BBB (US)

#### Summary:

A Japanese consumer purchased and downloaded computer software from a Japanese subsidiary of a BBB Accredited Business. There was an option to purchase online game written in small print "Users will be charged after a free trial period of 14 days". Without fully understanding the note, the consumer ended up applying for both services. He negotiated with the Japanese company and succeeded in canceling the game service contract. However, he was denied a full refund of the one-month subscription fee that he had already paid. The complainant filed this dispute to EC Network, which, in turn, sent the complaint to the company's U.S. headquarters through BBB. The headquarters decided to issue him a refund. In response to EC Network's suggestion, the company's Japanese subsidiary modified and improved the description on their web pages by changing the font size to larger. However, the head quarters wanted to keep its default order path up-sale. The consumer asked the company to uncheck the checkbox, claiming that the pre-checked "acceptance box" was misleading. In the end, the company followed the EC Network's advice.

BBB is a well-known self-regulatory organization in the US. Thanks to BBB's significant influence in the US and Canada, the business agreed to terminate its contract and the consumer was able to get a full refund. Given that this consumer could not solve this case while negotiating with the Japanese subsidiary by himself, this case clearly demonstrates how the cross-border network through ICA-Net provided effective solution through both CALOs efforts. In addition, both the US headquarters and the Japanese subsidiary agreed to adhere to Japanese business practice, improving the order pages on its Japanese web site as a result of receiving this complaint. EC Network had received similar complaints involving the Japanese subsidiary from other consumers, so the number of complaints should dramatically decrease.

In addition to the above, both CALOs were able to share beneficial information and views on negative option marketing. EC Network provided the information about the

Japanese “Act on Specified Commercial Transactions”<sup>28</sup> in which disclosure of key consumer information is mandatory and consumer rights in class action lawsuits are established. In turn, BBB provided EC Network the US Federal Trade Commission (FTC)<sup>29</sup>’s report on negative option marketing<sup>30</sup>. Through this exchange, both CALOs were able to share a common understanding on the importance of taking account of other countries’ business practices in cross-border e-commerce. Thus, exchanging information of good e-commerce business practice had ripple effects in both countries.

Again, this case demonstrates significant benefits of a system such as ICA-Net. Not only bringing solutions to individual consumers, it proved its ability to spread good business practice to e-commerce businesses and, therefore, to help prevent consumers from having future disputes.

#### Case 4: Fake Escrow Company

Residence of consumer: Japan

Other party: Spain?

CALO involved: EC Network (Japan)

Related organizations: eBay

#### Summary:

A Japanese woman sold a diamond ring (est. \$3,800) on eBay. The buyer who is thought to be residing in Spain instructed her to use a particular escrow company. The seller agreed to use the escrow company and sent the buyer the goods. Later, the seller lost contact with both the buyer and the escrow company before receiving its payment. The seller filed this complaint to EC Network. It informed this complainant that the escrow company was not the one which eBay designates and was very likely to be a fraud. Then, EC Network contacted an Online Dispute Resolution (ODR) director of eBay whose investigation team entered this case into Fraud Tracking System and alerted the Registrar/ISP. Shortly thereafter, this fraudulent website was removed.

Actions by eBay – which has direct interest, market power and considerable clout -- have profound effects when handling cases. Through eBay’s efforts, the disputed

<sup>28</sup> [http://www.meti.go.jp/english/ASC\\_sp.html](http://www.meti.go.jp/english/ASC_sp.html).

<sup>29</sup> <http://www.ftc.gov/>.

<sup>30</sup> <http://www.ftc.gov/os/2009/02/P064202negativeoptionreport.pdf>.

website was shut down. Some may argue that those malicious sites often close their websites, disappear, only to launch new websites under different names, simply continuing the fraud. There is an idea that shutting down those fraudulent sites would be less effective, but this case indicates a crime deterrent effect.

In addition to above, strong and immediate intervention by firms like eBay – and/or close cooperation with law enforcement entities -- is particularly crucial when handling these fraudulent cases. Regardless of the type of complaints, we underscore the importance of strengthening cooperation with law enforcement entities at the earliest stages to minimize the extent of damage for fraudulent cases and to decrease the number of bad actors.

In terms of business-to-consumer and consumer-to-consumer e-commerce transactions, measures for fraudulent cross-border e-commerce businesses have not been adequately addressed in the ASEAN and East Asia region. If the existence of ICA-Net comes to the public's attention in the near future, frauds will be less able to overtly defraud customers, since CALOs will help oversee domestic and cross-border e-commerce market. Cooperation among complaint handling organizations is just starting. However, we believe this case proves the importance of the role of ICA-Net in building safe and secure e-commerce market in the region.

#### Case 5: Undelivered goods from UK

Residence of consumer: Taiwan  
Business location: UK  
CALO involved: CI Kuala Lumpur office, Secure Online Shopping Association (SOSA) (Taiwan) and EC Network (Japan)  
Related organizations: CI London office, looking for like-minded org. in the UK

Summary:  
A Taiwanese consumer purchased several items from a motorcycle shop in the UK, but the shop did not ship any items. Though the consumer called and emailed the shop, there was no response, so the consumer consulted CI London office which, in turn, contacted CI's Kuala Lumpur office about this complaint. After obtaining consent from the consumer regarding handling personal information among the above-mentioned CALOs, CI's Kuala Lumpur office and SOSA of Taiwan proceeded to handle this case.



According to SOSA's investigations, the consumer was an auctioneer on Yahoo Inc. in Taiwan and resell imported foreign products to other Taiwanese. SOSA attempted to contact the consumer many times by email and phone, but there were no response from the consumer. Therefore, the details of the consumer's claim are unknown despite the efforts of SOSA.

Global network of consumer associations such as CI and ICA-Net are playing a bridging role and are well positioned to do so in a flexible manner.

#### Case 6: Auction Agent does not deliver goods

Residence of consumer: France

Business location: Japan

CALO involved: EC Network (Japan)

Related organizations: Forum des droits sur l'internet (France), Cabinet Office (Japan)

#### Summary:

A French consumer successfully bid on several items at Japan's major auction site through an auction agent in Japan. The consumer paid the agent, but has not received any items and lost contact with the agent. EC Network received this complaint from Forum des droits sur l'internet through the Cabinet Office of Japan after the consumer sought consultation with the organization. There was a question from Forum des droits sur l'internet whether doing business as an agent of auction site is illegal in Japan. EC Network explained that a business such as this, including this agent, is legal. EC Network in fact visited the agent, but its office was vacant. EC Network had never received any response from the agent, although EC Network tried to contact the agent via phone and email on several occasions. The phone number on its site was no longer available, but its website is still open, so the agent is very likely to be fraudulent. EC Network also told the French counterpart this case is debt default and can be handled as a civil complaint under the Japanese laws.

Despite efforts of EC Network, the agent has already disappeared by the time EC Network visited the location of the agent. To reinforce an earlier point, cooperation with law enforcement entities is indispensable when handling fraudulent cases as described in Case. However, neither the complainant nor Forum des droits sur l'internet of France would have been able to learn of the disappearance of the agent by themselves without EC Network's assistance. When consumers lose contact with businesses in cross-border e-commerce, in particular, is very difficult to identify what

happened to those businesses. Therefore, a system such as ICA-Net can provide flexible intervention to assist in learning the operational status of the business. Also, Forum des droits sur l'internet and EC Network were able to share information including Japanese laws. Given the fact that e-commerce is a borderless world, partnership with like-minded organizations not only in ASEAN and East Asia region but also in European countries is beneficial.

#### Case 7: Unable to import a car from Japan

Residence of consumer: Consumers from Kenya and other countries

Business location: Japan

CALO involved: EC Network (Japan)

Related organizations: Ministry of Economy, Trade and Industry (METI), The Japanese Embassy in Kenya, Japan Used Motor Vehicle Exporters Association (JUMVEA) and Japan Auto Appraisal Institute (JAAI)

#### Summary:

EC Network has received several complaints against Japanese used car dealers specifically from Kenyans who were introduced to EC Network by the Japanese Embassy in Kenya. Most of them paid in advance, lost contact with the dealers and could not receive cars or received defected cars. EC Network shared information with Japan External Trade Organization (JETRO) which also had received many similar complaints. As a consequence, EC Network asked METI to gain cooperation of the Embassy. METI served as a conduit between the Embassy and the above-mentioned industry organizations. As a result, both JUMVEA and JAAI shared this case with the Embassy. JUMVEA agreed to contact its members in the event of disputes with foreign consumers, and will consider having cooperation with Kenyan used car associations. For JAAI's part, it will consider running an advertisement of an alert message in Kenyan newspaper. Furthermore, the Embassy is expected to provide a link with JUMVEA's English site which displays a list of its members.

This case represents that well-coordinated efforts encouraged domestic government offices and industry groups to deepen their understanding of current situation and further promote to create a healthy market environment. These efforts and collaboration are key role of the ICA-Net's objectives.

## Case 8: School closure while studying abroad

Residence of consumer: US

Business location: US, Japan, Beijing, Sweden, Germany and Australia

CALO involved: BBB (the US & Canada), EC Network (Japan)

### Summary:

This case was an inquiry from BBB to EC Network. While American students were participating in a studying program in China, the Seattle office of the school suddenly closed. The headquarters of the overseas study program provider stopped paying bills covering its students studies in China. BBB contacted EC Network to confirm whether the affiliated office in Japan was still operating. EC Network contacted the office by email and phone but received no reply. EC Network staff then personally visited the location of Japan's office. An English conversation school under a different name was operating there. EC Network reported this information to BBB in the United States.

This reference information helped BBB confirm that the entire school network – not just the Seattle office – had ceased operations. That information, in turn, was used by BBB in its publicly-distributed report to consume

## **2.4. Terms of Reference of ICA-Net**

### *2.4.1. Consideration of work group in 2008 and test operation of ICA-Net*

In 2008, this working group investigated the current situation of cross-border e-commerce and legal systems of each country as the background to paving the way to the ICA-net framework approach. The working group studied structures of dispute resolutions suitable for ASEAN and East Asia, consulting the approaches of ECC-Net and BBB in the USA. Then, ICA-Net was put into test operation. Detailed results of consideration and the test operation can be referenced in the 2008 report.

In 2009, the working group continued the test operation, and confirmed the significance of ICA-Net. The test operation of the ICA-Net proved that the network can resolve the disputes in some cases. It also demonstrated the usefulness of the ICA-Net as a platform to share information about the legal systems and best practices in

the e-commerce arena. In addition, the working group considered the concrete operation rules and the framework of the ICA-Net on the basis of experiences of test operation.

Section 2.4.2. inserted below looks at the essential concept of ICA-Net once again. Section 2.4.3. describes the Terms of Reference of ICA-Net as a result of considerations of the work group in 2009.

#### *2.4.2. The Basic Concept of the ICA-Net*

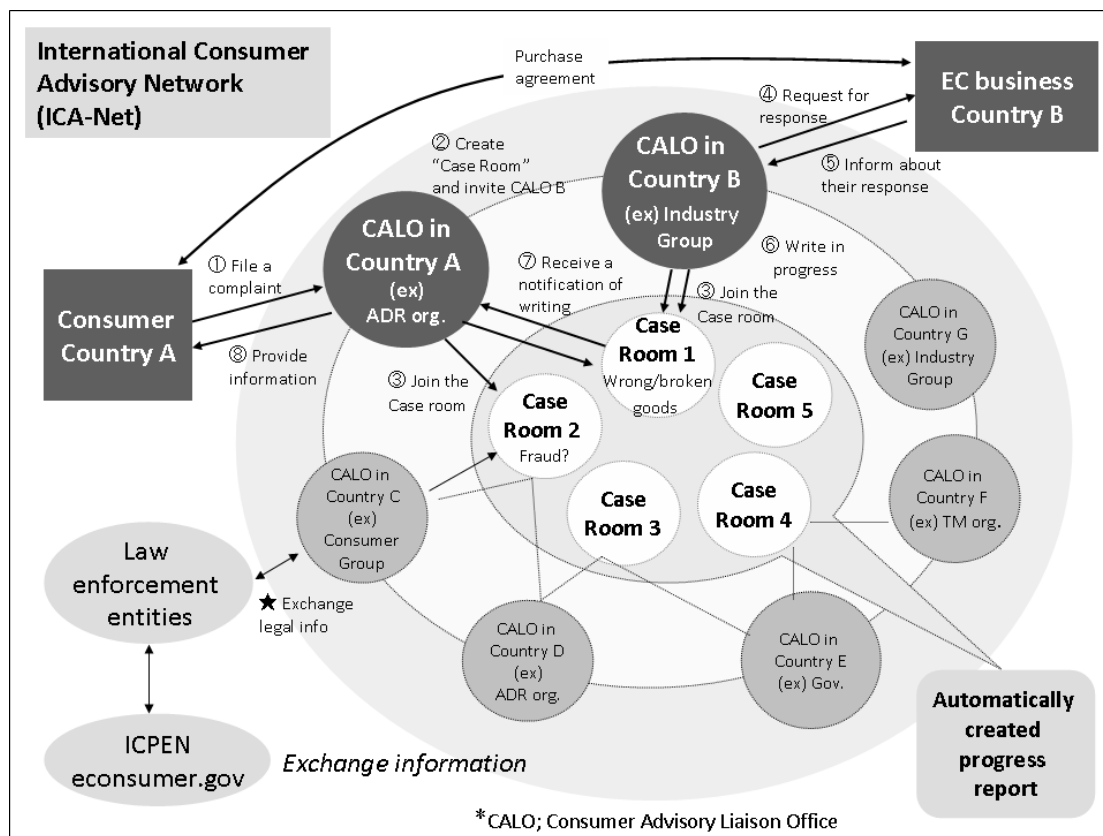
The new framework, ICA-Net, proposes that governments designate consumer advisory service providers, to be called Consumer Advisory Liaison Offices (CALOs), and that CALOs around the world build a loose network.

The primary role of CALOs is to receive inquiries on cross-border disputes from domestic consumers and to provide information and advice to those consumers. In addition, if necessary, a CALO may contact the CALO in the country where the merchant business is located, and both CALOs will work jointly to handle the complaint. When it is difficult to handle a complaint in a consumer's own language, the CALO in the consumer's country will translate the complaint into English and convey it to the other CALO.

Another role of CALOs is to receive complaints related to domestic companies from overseas consumers via the CALO in the country where those consumers live, and to provide support to settle issues and disputes effectively. For this purpose, CALOs are expected to collaborate with relevant organizations in their respective countries, such as ADR service providers, business associations, consumer groups, Trustmark service providers, and law enforcement entities.

The basic framework is the same as what has been developed under bilateral collaborations, such as between the U.S. and Japan. The objective of the new framework is to extend the same activities to multilateral collaboration. Another aim is to approximate a solution through cooperation between domestic organizations for cases that cannot be resolved through complaint handling and ADR providers. These aims and activities are exactly the same as those of ECC-Net.

**Figure 2.1. International Consumer Advisory Network (ICA-NET)**



**2.4.3. Terms of Reference of ICA-Net**

The working group discussed the concrete operation rules and functions of the ICA-Net, as described below. Further discussion is required, since the working group could not partly reach consensus.

**(1) Objective**

To establish a secure and safe e-commerce environment in ASEAN and the East Asian region through a reliable structure of dispute resolution.

**(2) Scope**

Every complaint and dispute arising from B2C cross-border e-commerce. Cases involved in mainly consumers in ASEAN and the East Asian region.

(3) Structure and Mechanism

- \* Government of each member country assigns CALO
- \* Each member country provides funding for the operation of its CALO
- \* CALO enters into a MOU with each country under government support

(4) Prerequisites to become a CALO

A CALO should be reliable as an international ADR/ODR institution, which aims at offering redress for consumers. Thus, a CALO must comply with the following standards which are also described in 2.1.:

- a. Fairness / Independence / Impartiality
- b. Visibility
- c. Availability for use by consumers
- d. Affordability / Cost effectiveness
- e. Credibility
- f. Effectiveness
- g. Finality
- h. Enforceability
- i. Transparency

At the present stage, the ICA-Net plans to focus on providing relevant information to a consumer and to transmitting the translated complaint to the CALO in another country. It is not expected to act as a troubleshooter of a dispute resolution itself. Most important thing is to obtain as many participating countries as possible at this stage. Therefore, the requirements for CALO should be the minimum so that any consumer can contact with CALO in its region to ask for help in solving problems with any business in any country in the region. The environment in which cross-border complaint handling is made available to consumers in any country should be established.

Accordingly, the five elements - (b) Visibility, (c) Availability for use by consumers, (d) Affordability / Cost effectiveness, (e) Credibility, and (i) Transparency - are the essential elements for ICA-Net among the elements inserted above. (a) Fairness / Independence / Impartiality, will be challenges for CALO, as the legal system for handling information in each country varies. This is described again later in this

report.

(5) Function of a CALO

- i) The role of a CALO in country A: support to the consumer in country A
  - \* The CALO receives inquiries from its domestic consumers, and provides advice on legal matters, methods of dispute settlement, and systems or agencies available for dispute settlement.
  - \* When a consumer files a complaint to the CALO, it translates his/her complaint about the said business into English, reports it to the CALO where the business is located, and gives feedback to the consumer.
  - \* For complaints other than transactions, such as those related to lotteries, gambling, spam, or identity theft, as well as cases where the location (country) cannot be identified, the CALO recommends reporting them through the site of [econsumer.gov](http://econsumer.gov).
- ii) The role of a CALO in country B: correspondence to the business in country B
  - \* When a complaint is filed with a domestic business through an overseas contact point, the CALO asks an industry group, a self-regulatory scheme (Trustmark, etc.) or the shopping mall to which the said business belong to respond to the complaint, depending on the nature of the problem. Or, the CALO might make direct contact with the said business.
  - \* Cooperation of law enforcement authorities is requested when the contact information of the business is unknown, when there is no response from the business, or when there seems to be a violation of a law.
  - \* The CALO reports the result to the CALO in the consumer's country.

(6) Handling information

A well-balanced system should be designed for the ICA-Net, in consideration of the following three contradicting elements:

- 1) need to protect personal information of the parties involved,
- 2) need to share the maximum amount of information among parties concerned for the sake of dispute resolution and for future harmonization of legal systems in different countries, and

3) need to share information to enlighten consumers and businesses.

The working group has discussed these issues since the workshop in 2008, but a unified conclusion has not been reached yet because of the differences in the concept and legal systems of each country. The way of handling information must be further examined through the actual operation of ICA-Net.

As the minimum rule for 1) above (confidentiality), the working group has agreed on the following:

- a. It is strongly recommended that communication for ICA-Net must be performed on a safe platform that information is easy to manage.
- b. Details of each complaint must be shared only among CALOs in the country concerned.
- c. The CALO that receives a complaint from a customer should control the use of personal information in accordance with internationally accepted guidelines such as the OECD Personal Information Protection Guideline and the APEC Privacy Framework, and its domestic laws.
- d. The CALO obtains the consent of the consumer involved beforehand, when it transmits the case that includes his/her personal information to a CALO in another country for the purpose of solving the case.

For the needs in 2) and 3) above, the working group discussed how to inform domestic law enforcement authorities and how to disclose the name of a business in dispute. However, a unified agreement has not been reached yet. While there is an opinion that providing information to enforcement authorities and disclosing the name of the business are mandatory for an effective dispute resolution, there is another opinion that a careful study of the issue should be done taking into account the prevailing laws and regulations in other countries or regions such as the EU, so as not to jeopardize future cooperation efforts with them. For instance, the following ideas were discussed at the working group:

- \* Each CALO should handle complaints based on its domestic legislation and its own methodology.
- \* Whether or not a CALO should share information with other domestic organizations, such as law enforcement entities, is left to the discretion of each CALO.
- \* When a CALO is going to make an announcement about a case it handled, it should



obtain the approval from other CALOs involved in the case. Revealing the name of the company should be handled carefully as it may go against the other country's legislation.

(7) Towards the future

- 1) It is desirable that ICA-Net improves its credibility through building up the successful cases it handles.
- 2) The ICA-Net should be visible for a customer. To achieve this, cooperation with existing complaint handling systems and information dissemination are necessary to gain international exposure.
- 3) To make the accumulated information accessible to customers and businesses will enhance the transparency of ICA-Net. Such information can also be used as reference by policy makers of in other countries in formulating and implementing policies. However, the further discussion is required, regarding the information that the ICA-Net can make available to the public.
- 4) ICA-Net should be designed on the premise that a CALO in each country is financially stable, so that ICA-Net becomes an affordable mechanism for handling consumer cases. Furthermore, a sustainable secretariat is required for the efficient and effective operation of ICA-Net.

### **3. Policy Recommendation: Toward a Realization of the ICA-Net**

#### **3.1. Expansion of e-Commerce Market in ASEAN and East Asia**

The e-commerce market is rapidly growing, as the population using the Internet increases in ASEAN and East Asia. In fact, almost one-third of the Internet users in the world live in this region. Since the penetration rate of the Internet in the region is relatively low compared to developed countries, the number of the Internet users will continue to grow with the improvement of domestic infrastructure. This will contribute to accelerating development in e-commerce transactions.

Cross-border e-commerce is also expected to grow. Businesses, in particular small-and-medium businesses are keen to take advantage of the opportunity provided by the internet to start e-commerce, because they can directly sell goods and services across borders without hefty investments. The expansion of cross-border trade is one of the key aspects to ensure sustainable economic growth in ASEAN and East Asia.

#### **3.2. Challenges to Enhance Cross-border e-Commerce**

For the expansion of cross-border trade in e-commerce, it is important to improve the e-commerce environment throughout the region so that businesses and consumers can participate in secure transactions. There are two major challenges to encouraging both parties to engage in cross-border e-commerce.

One is the differences of the legal systems in each country. The penetration rate of e-commerce varies country by country, even though each e-commerce market of ASEAN and East Asia is showing expanding trends in general. Likewise, the scope and level of the development of legal systems regarding e-commerce are also different depending on the country. The present circumstances might become potential stumbling blocks for the expansion of cross-border e-commerce. For example, the costs of research and compliance are too high for e-commerce businesses due to the legal differences in e-commerce-related, consumer protection and protection of personal information laws. Also, it is difficult for them to predict the risks of cross-border e-commerce, since there is no common rule in jurisdiction over cross-border disputes among the countries. Similarly, consumers feel the risk of buying products from overseas because it is unclear which country's laws will be applied or to what extent they will be protected if by any chance they do encounter problems. These factors will

result in reluctance to conduct online transactions throughout the region.

The other challenge is the lack of institutions to deal with cross-border disputes regarding e-commerce. Many complaints, especially in B2C e-commerce with a low transaction value, can be solved through consultations provided by consumer groups and governmental agencies before resorting to litigation or arbitration. While each country makes efforts to provide consultation in order to increase consumer confidence in the e-commerce market, such efforts are not necessarily sufficient to handle complaints about cross-border transactions. This situation will also prevent the growth of e-commerce beyond the borders.

### **3.3. Policy Recommendation**

In order to build a secure and safe ecommerce environment in ASEAN and the East Asian region, each government should address the following policies:

- *Harmonization of the legal systems regarding e-commerce* by conducting an examination and information exchange regarding the legal systems of each region.
- *Improvement of international complaint handling scheme* by ensuring the effective operation of the ICA-Net that deals with problems in cross-border e-commerce.

#### Harmonization of the legal systems regarding e-commerce in the region

First, legal harmonization related to e-commerce should be initiated along with harmonization of the customs systems and the development of a common environment for distribution and payment systems. By doing so, cross-border e-commerce can gain more popularity in the entire region. Advanced efforts made by the European Union (EU) are noteworthy. The EU adopted the proposal for a Directive on consumer rights in 2008<sup>31</sup> to achieve full harmonization of consumer rights in the internal market.

However, the ideal legal harmonization perceived will not be easy in ASEAN and the East Asian region, considering the huge differences in social, political and economic situations among countries. Even though each country's law provides similar regulation, actual practices in implementing laws may be different from each other, as

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[http://ec.europa.eu/consumers/rights/docs/COMM\\_PDF\\_COM\\_2008\\_0614\\_F\\_EN\\_PROPOSITION\\_DE\\_DIRECTIVE.pdf](http://ec.europa.eu/consumers/rights/docs/COMM_PDF_COM_2008_0614_F_EN_PROPOSITION_DE_DIRECTIVE.pdf).

seen in the advertisement regulations. As a first step, comparing and visualizing the similarities and differences of the legal systems of each country is beneficial for businesses, and consumers. They can gather sufficient information to engage in conducting online transaction beyond the borders. Policy makers can also take advantage of the information to improve the legal system. Therefore, governments should collaborate with each other in order to compare their systems and initiate steps which will lead to the harmonization of legal systems related to e-commerce and the economic integration in ASEAN and East Asia.

#### Improvement of international complaint handling scheme in the region

Second, a network of regional complaint handling organizations with expertise in the legal systems in the region should be formed in order to solve the disputes of cross-border e-commerce transactions. The major factor of cross-border e-commerce problems and disputes is the lack of communication stemming from the differences in languages, regulations and business practices. Thus, establishing the network – ICA-Net – will be effective for facilitating communication among complaint handling organizations within the region. When disputes arise, the organizations can work together to solve them through the network. Indeed, the working group found that some cases were solved effectively through the ICA-Net. In one case, when a consumer unintentionally paid for the service of negative option marketing, the complaint handling organizations of both parties cooperated in efforts to solve this case. As a result, the consumer received a full refund.

To ensure the effective operation of the ICA-Net, the following need to be addressed with government assistance:

- *To select a reliable CALO in each country so that countries can effectively communicate with each other*

Each country should designate a complaint handling organization as a Consumer Advisory Liaison Office (CALO) to realize the International Consumer Advisory Network (ICA-Net) in the region. Fortunately, candidate complaint handling organizations for CALOs already exist. It is advisable that each government commits to choosing a qualified organization that intends to comply with a rule such as the terms

of reference proposed in 2.4. in this report. The functionalities of ICA-Net are 1) to receive cross-border e-commerce complaints from domestic consumers, 2) to provide advice or information, 3) to send the complaints to the other CALO where the other party is located and 4) to ask the business to exert efforts to solve the dispute through the CALO. In order to make these procedures reliable, the members of the CALO should create the internal rule for the CALO that stipulates the guidelines for handling personal information.

- *To ensure adequate financing for complaint handling affordable to consumers*

The CALO should be well-financed to handle complaints and provide information without making consumers bear any cost. In many countries, the complaint handling service is provided for free. For this reason, future CALOs should be able to operate at low cost and maintain a solid financial base to handle cross-border e-commerce complaints. To this end, each government should provide minimum financial assistance with the CALO.

- *To cooperate with domestic law enforcement entities*

The working group found that solving some cases in the hands of bad actors or fraudsters was difficult through the ICA-Net. These fraudulent cases are beyond the capacity of complaint handling organizations, and therefore, intervention by law enforcement entities is necessary. To promote resolution of disputes, cooperation between CALO and law enforcement authorities is required.

- *To promote the ICA-Net to aggregate complaints cases*

The promotion of the ICA-Net is important for collecting complaints or problematic cases into the ICA-Net. Rich experiences in complaint handling will develop the capacity of the CALO. The information on problematic cases regarding e-commerce will indicate the policy areas that should be addressed. Accumulating the number of cross-border cases handled will make it possible to figure out further issues that should be investigated toward legal harmonization.

- *To expand the number of participating countries as a CALO and to cooperate with other international fora in the region as well as outside the region.*

Expanding and strengthening cooperation with stakeholders is important to deal with cross-border disputes in online transactions, since troubles can occur in any place. Efforts to increase the number of participating countries in the ICA-Net are needed in the region as well as outside the region. It is expected that the ICA-Net collaborates with other international networks such as the ECC-Net, the ASEAN Coordinating Committee on Consumer Protection (ACCCP), and the International Consumer Protection and Enforcement Network (ICPEN).

### **3.4. Toward a Realization of the ICA-Net**

After a two-year research project, the effectiveness of the ICA-Net as a venue for handling individual complaints was proven. The project also demonstrated the usefulness of the ICA-Net as a platform for information sharing such as information on the legal systems of each country and best practices for solving disputes among the CALOs. The establishment of the Social Networking Service (SNS) was also beneficial because the CALOs can easily share such information through the system at any time.

By continuing and maintaining the ICA-Net network among the participating countries with a central focus on complaint handling, each government is able to obtain better understanding of the legal systems and learn from best practices of other countries, towards increasing consumer protection in the context of cross-border e-commerce. The ICA-Net could provide the impetus for the harmonization of legal systems on e-commerce in the region and thereby contribute to the economic integration of ASEAN and East Asia.