

Chapter 3

Research for Establishment of a Safe and Highly reliable Marketplace in ASEAN and East Asia

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III. Research for establishment of a safe and highly reliable marketplace in ASEAN and East Asia

1. Current status of e-commerce market and related rules in each country

1.1. Summary and Analysis of Country Reports

Based on the valuable information provided in the country reports below and during the workshops themselves, some preliminary observations can be made on the current status of e-commerce markets and related rules in East Asia and the ASEAN region.

(1) E-commerce markets

All countries that participated in this working group have populations of internet users that are steadily increasing year by year. The same rising trend can be observed in terms of the number of websites (both commercial and non-commercial), and the number and value of e-commerce transactions in each country. This is also the case for the number of broadband users in each country, which is steadily increasing. However, the absolute level of current broadband penetration in each country differs significantly. In some countries, the majority of households are connected to the internet through broadband; in other countries the opposite is true, with only a minority of households using high-speed internet access.

Many countries provided information on the demographics of internet users, and the ways in which they engage in e-commerce. Not surprisingly, the majority of internet and e-commerce users are in their 20s, 30s, and 40s. Further, the methods that consumers are using to access the internet and e-commerce are evolving, with greater use of mobile devices such as laptops and mobile phones being used in addition to the desktop computer. Further, although most e-commerce transactions are conducted in relatively small monetary amounts, it is interesting to note that the most popular purchases made online seem to differ significantly from country to country, ranging from airline tickets, to books, to online games.

(2) Laws, regulations, and internet governance

All countries are adapting their legal systems to respond to the growth of e-commerce, by establishing national laws, regulations and guidelines. While some countries have in recent years enacted a comprehensive suite of laws

applicable to multiple aspects of e-commerce, other countries are currently in the process of bringing their legal system up to date to respond to rapidly evolving electronic commercial practices and technologies. Further, the content of the laws themselves and the business activities they cover differ from country to country. For example, in the various countries that participated in the workshops, e-commerce laws have been enacted for various purposes, including to:

- Affirm the legal validity of electronic transactions and electronic contracts
- Remove legal obstacles to e-commerce
- Add legal clarity and certainty to the procedural requirements for electronic transactions
- Protect privacy and personal data
- Define criteria for electronic signatures
- Control “spam” and/or unfair advertising practices
- Allow consumers the right to seek redress for unfair e-commerce practices
- Define illegal acts and computer crimes such as “hacking” or other unauthorized computer usage
- Create rules for e-commerce in specific sectors, such as for transactions with banks or government
- Establish regulatory oversight for e-commerce among government ministries and agencies

In some countries, these laws may be also complemented by private sector-driven voluntary commitments, standards, systems and guidelines for e-commerce.

It also became clear during presentations made at the workshops that the structure of internet and e-commerce governance in each country has ramifications for the extent to which governments can take action against unscrupulous e-commerce operators. For example, some countries require all e-commerce operators to first register with the government, whereas in other countries, this is not a requirement. Further, domain names in some countries are maintained by government agencies or government-affiliated bodies, whereas in other countries, this function is carried out by a private company. Differences such as these can mean that governments in some countries have greater oversight of their e-commerce marketplace and have a greater range of levers available for dealing with irresponsible e-commerce websites than governments in other countries.

No country's laws, regulations and governance form a perfect system that can respond to all the problems arising from rapidly evolving and expanding e-commerce markets. There are therefore various gaps that exist at the national level, but in addition to these domestic gaps, the legal differences from country to country can lead to confusion and uncertainty as to how to resolve problems arising from e-commerce transactions that cross national boundaries.

(3) Trust marks

All countries that participated in the workshops have introduced trust mark systems for e-commerce, whether administered by government agencies or private organizations. In some countries, trust marks are administered by a single organization, whereas in other countries, there are multiple organizations issuing a variety of different trust marks.

A common problem identified with these trust mark systems is their relatively slow pace of adoption thus far by e-commerce operators in East Asia and the ASEAN region. Some workshop participants stated that the slow pace of adoption may be due to lack of awareness among businesses and the public, and indicated that further publicity campaigns may be necessary to increase their utilization. Another problem area highlighted by workshop attendees is the fraudulent use of trust marks themselves by dishonest e-commerce operators wishing to project an image of safety and security when in fact the opposite may be the case. Some countries have introduced security features to prevent against the fraudulent use of such marks.

It was also reported during the workshops that international cooperation among trust mark-issuing organizations has been increasing. For example, in Asia, the Asia Pacific Trustmark Alliance (ATA) now consists of 9 member organizations in seven economies in the region (see section III, 3.1 below for more details).

(4) Consumer advisory and dispute settlement

In some countries, there are organizations that have been established specifically to assist with problems and disputes arising from e-commerce transactions. In other countries, consumer organizations focused exclusively on e-commerce do not exist, but problems arising from e-commerce may

instead be dealt with by chambers of commerce or general consumer groups. It was pointed out at the workshops that consumers often do not know who they can contact to seek help for settling e-commerce related disputes, especially where international transactions are concerned. Further, the ability of consumer organizations to solve e-commerce disputes may be limited to mediation and facilitation of discussion between parties, and so consumers' expectations often need to be managed accordingly.

There is an emerging patchwork of international cooperation between organizations that handle complaints arising from e-commerce transactions. This cooperation has often taken the form of memoranda of understanding (MOUs) between consumer groups in different countries. However, such cooperation is still quite limited in East Asia and the ASEAN region, where some cooperative MOUs have been signed, but where a comprehensive regional network for dispute resolution and consumer advisory has yet to be established.

(5) Other confidence building initiatives

In addition to the creation of trust mark systems and organizations to assist with problems and disputes arising from e-commerce, some countries have established confidence building organizations to encourage the use of e-commerce. These organizations can perform functions including e-commerce training programs, security planning, and more general education and awareness programs. Some countries have also reported financial assistance programs for small businesses to assist with the adoption of e-commerce.

(6) Further analysis of country information

Although the above short summary and analysis attempted to compare and contrast the information received from the countries that participated in the workshops, it was proposed that a more systematic comparison of each country's e-commerce market and related rules would help to identify gaps and areas for future cooperation to help solve e-commerce related problems. It was suggested that this work, which could include the creation of a detailed database or matrix, could be conducted in fiscal year 2009.

1.2. Malaysia

(1) E-commerce market

"Although there is a low broadband penetration rate in Malaysia, internet and e-commerce usage is predicted to grow strongly in the future. The emergence of wireless technologies such as WiMAX and 3G will provide an alternative for consumers to hook themselves to the internet, apart from the conventional fixed-line broadband. The competition among internet providers will bring down the price of internet accessibility and it will become more affordable to the mass market. The increase of unique internet users in Malaysia will create an awareness of e-commerce and drive internet commerce spending," says Lincoln Lee, research manager, Telecommunications, International Data Group (IDC) Malaysia.

IDC released a study in 2007 titled "Malaysia Internet and E-Commerce 2006–2010 Forecast: Tracking the Development". In IDC's recently published Internet Commerce Market Model v10.2, Malaysia's internet market is expected to continue to grow robustly throughout IDC's forecast period of 2006-2010, represented by a compounded annual growth rate of over 28%.

The e-commerce market in Malaysia continues to grow healthily on the back of a healthy economy. The Malaysian economy is expected to grow by 5.4% in 2006, and interest rates are expected to continue rising in a non-aggressive manner as Bank Negara Malaysia (the nation's central bank) continues to forge sustainable economic growth in light of the forecast rise in the consumer price index (CPI) of 2.4% in 2006.

"The outlook for e-commerce in Malaysia certainly looks bright. However, global e-commerce spending in 2005 was US\$3.8 trillion, and has reached US\$5.0 trillion in 2006. Meanwhile, in Asia/Pacific, e-commerce spending will reach approximately US\$645 billion in 2006," says Mr. Lee. "When taken into this context, Malaysia's e-commerce industry still has much room for improvement. Among the key issues that need to be addressed to ensure this sustainable growth in the market are development of payment gateways, easing of monetary regulations and proper e-government delivery".

Malaysia's business to consumer (B2C) e-commerce spending in 2005 was approximately US\$1.9 billion, and has grown by 43% in 2006 to reach

US\$2.8 billion. B2C spending is expected to increase healthily at a 24% compound annual growth rate during 2005-2010. Meanwhile, business to business (B2B) e-commerce spending in Malaysia in 2006 will amount to US\$13.6 billion, representing a growth of 77%. B2B spending will increase at a 29% compound annual growth rate over the same period. Meanwhile, the country has seen the number of unique internet buyers growing. In 2005, there were 4.7 million unique buyers, and in 2006, internet users will reach just over 6 million. In terms of internet access devices, the mobile internet access devices market has exhibited astounding growth in 2006, with a growth rate of 49%, reaching a total of 3.9 million devices. This growth is expected to peak in 2007, with a growth rate of 61%, allowing mobile internet access devices to account for nearly 45% of total internet access devices.

"The Malaysia e-commerce market has exhibited a healthy growth rate of 70% in 2006 in comparison with that in 2005. However, in order to ensure sustainable growth, there is still plenty of work to be done to develop this industry into a mature market," added Lee.

There are at least three major forces fueling e-commerce: economic forces, marketing and customer interaction forces, and technology, particularly multimedia convergence.

The Malaysian government is also promoting e-commerce by implementing payment systems for on-line transactions, such as payment of utility bills, income tax payment, other employee related deductions, company registrations, company information purchasing, drug registrations and many government tenders through e-procurement. These government initiatives are intended to promote e-commerce as a preferred mode of transaction in Malaysia.

(2) Legal systems related to e-commerce

Several cyberlaws have been enacted for implementation by various regulatory agencies for the communications and multimedia industry and related activities.

The Malaysian Government has committed itself to providing a comprehensive regulatory framework of cyberlaws and intellectual property laws to facilitate and assist the development of IT and e-commerce. Towards this, the Malaysian Government has enacted laws such as the Digital

Signature Act 1997, the Computer Crimes Act 1997, the Communications and Multimedia Act 1998 and the Electronic Commerce Act 2006. In addition, it is drafting the Personal Data Protection Act.

- The Digital Signature Act 1997

This Act establishes the legal validity, enforceability and admissibility of digital signatures. It recognizes repositories and authorizes the Minister to appoint the Controller of Certification Authorities. This legislation addresses the functions of certification authorities, the general requirements for a licensed certification authority, and the application procedures to become a licensed certification authority. This Act also subjects the licensed certification authorities to annual performance audits and delineates requirements for the issuance, suspension and revocation of a certificate.

- The Computer Crimes Act 1997

The Computer Crimes Act 1997 (CCA) primarily makes unauthorized access to computers, programs, data and other IT information an offense. The offenses are categorized in the CCA as:

- (i) Unauthorized access to computer material;
- (ii) Unauthorized access with intent to commit or facilitate further offence;
- (iii) Unauthorized modification of the contents of any computer; and
- (iv) Wrongful communication of the means of access.

- The Electronic Commerce Act 2006 (ECA)

The objectives of the ECA are 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 effective only to commercial activities. The ECA does not apply to:

- (i) regulatory activities between the public and government such as applications for licenses, which are to be governed by the Electronic Government Activities Act; and
- (ii) wills, creation of trusts, power of attorneys and negotiable instruments.

Section 7 of the Act, states clearly the following:

- (i) The formation of a contract, the communication of proposals, acceptance of proposals, and revocation of proposals and acceptances or any related communication may be expressed by an electronic message.

- (ii) A contract shall not be denied legal effect, validity or enforceability on

the ground that an electronic message is used in its formation.

The Act came at the right moment where there was a voracious need for legislation to regulate and facilitate the rapidly increasing use of commercial transactions concluded through the use of electronic means.

The ECA does not mention any provision relating to consumer protection. Therefore, reference has to be made to the Consumer Protection Act 1999 to safeguard consumers' interests.

- The Consumer Protection Act 1999 (CPA).

Due to the recent amendment to the Consumer Protection Act 1999 in August 2007, the consumer is protected under this Act for transactions involving online matters. According to Section 2 of the Act, "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 Electronic Government Activities Act 2007 (EGA)

The EGA 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.

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

It offers two types of digital certifications: a personal certificate, which verifies the identity of an individual; and a server certificate, which guarantees the authenticity of a specific website.

- The Personal Data Protection Bill (PDP)

The PDP has yet to be enacted although it is in the final stages of drafting.

The PDP Act aims to increase confidence in on-line transactions and protect the privacy of personal data residing in computer systems and transmitted over networks and the internet. This Act will introduce penalties including fines and imprisonment for those who abuse cyber-information.

(3) Efforts to build confidence in e-commerce

The Malaysian Government, through key development policies, emphasizes promoting e-commerce and enhancing its use to enable Malaysia to compete more effectively in the global market. Towards this, special focus will be given towards promoting and encouraging the wider use of

e-commerce as a new way of doing business through the digital network. The government is also undertaking measures to build trust and confidence in e-commerce, including security and privacy for consumers. Infrastructure and logistical support, which encompass networks, payment systems and logistics, will also be provided to enhance the development of e-commerce. Business and communities will be encouraged to respond and participate actively in the development and the usage of e-commerce.

The Malaysian Trade Development Corporation provides training and financial assistance to small and medium enterprises adopting e-commerce activities to reach out to the global market.

However, efforts to educate and promote participation among consumers are still in the initial stages, as many of the implementation agencies are in the process of developing guidelines and checklists for traders and consumers with regard to e-commerce in Malaysia.

(4) Need for international e-commerce and co-operation

The ASEAN Coordinating Committee on Consumer Protection (CCCCP) was established in 2007, with functions to:

- (i) implement a mechanism for cross-border settlement of consumer redress;
- (ii) facilitate regional training courses on consumer protection as ASEAN becomes a more integrated market;
- (iii) empower consumers' position in the marketplace through the development of consumer education tools;
- (iv) collect consumer-related data to ensure that consumers' concerns are taken into account in legislative proposals and other initiatives; and
- (v) facilitate the creation of an ASEAN Network of Consumer Organizations in member countries to assist in the implementation of the recommendations and decisions of the ASEAN Coordinating Committee on Consumer Protection.

1.3. Singapore

(1) Introduction

This report has three parts. The first part, entitled *e-commerce market*, highlights the state of internet use in Singapore according to the findings of surveys conducted by the Infocomm Development Authority of Singapore (IDA). The second part of this report, entitled *legal systems related to*

e-commerce, covers the relevant laws that provide for consumer protection generally and specifically. The second part also highlights some of the self-regulating regimes that are successfully operating in Singapore. The third or last part of the report, entitled *efforts to build confidence in e-commerce*, covers the various avenues for consumers to seek redress in the event of disputes with vendors.

(2) E-commerce market

Internet use in Singapore is very pervasive and most households on the island have access to broadband services. There are plans to increase the speed of broadband internet to cater to the provisions of higher quality services that require higher speed access, such as video on demand and the like.

Allow me to highlight some of the key findings of IDA's Annual Survey on infocommunication penetration and usage in households in the year 2008.

i) Key findings on infocommunication penetration

- About 80% of households in Singapore have access to computers. This figure has been growing from around 74% in 2004.
- Compared to public housing households, there are more households in private housing that have access to computers, 77% and 94% respectively. The percentage of public housing households that have access to the internet has also been growing at a faster rate than that for private housing (not surprising as the public housing category has more room to increase).
- In 2005, just 68% of public housing households had access to computers; compared to 2008, that is a nine percentage point jump.
- Compared to households without children attending school, those with children attending school are more likely to have a computer at home (73% and 94% respectively). This can imply that school children are increasingly required to use computers or have access to computers and that computer literacy is relatively high.
- Households with internet access have also been increasing. In 2004, there were just 65% of households that had internet access, but in 2008, the figure reached 76%.
- The survey also found that subscription cost is the least important reason

why Singapore households do not have internet. This implies that internet subscription is relatively affordable, so it is no wonder that more households have internet access.

- In 2008, 100% of internet-using respondents used computers to access the internet from home. While this is not surprising, the interesting bit is that a mere 11% used a mobile phone with internet capability to access the internet. This is interesting because it could be an indication that mobile internet is not very popular. Of course, it could also be due to it being more logical to use a computer to access the internet from home as opposed to a tiny screen of a mobile phone.
- Singapore does have a very high broadband connection rate, as 99% of home internet users connect to the internet via broadband.

Penetration rate of internet and broadband

Table 1-3-1 shows household access to the internet¹ as a percentage of total households

2004	2005	2006	2007	2008
65%	66%	71%	74%	76%

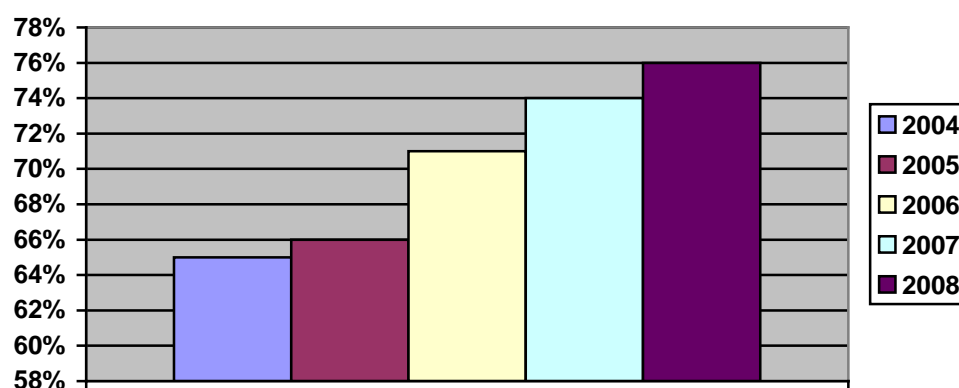


Figure 1-3-1 shows household access to the internet as a percentage of total households

Table 1-3-1 and figure 1-3-1 show that the percentage of households that have access to the internet is on the uptrend. The percentage was only about

¹ [IDA's Annual Survey on Infocomm Usage in Households for 2008](http://www.ida.gov.sg/doc/Publications/Publications_Level3/20090218183328/HH2008Rpt.pdf),
http://www.ida.gov.sg/doc/Publications/Publications_Level3/20090218183328/HH2008Rpt.pdf

65% in 2004, and in 2008 it has risen to 76%. We believe that the percentage will continue to move upwards and more households will subscribe to broadband. The government is also encouraging this, as it intends to roll out a comprehensive IT plan to introduce high speed access for the whole island. Our educational system is also helping to fuel the use of internet, as school assignments are increasingly being assigned to students over the internet and handing in of school work is also done digitally. As the youth become accustomed to broadband, the use of internet in our households is poised to increase rapidly in the near future.

Table 1-3-2 shows household broadband penetration²

2003	2004	2005	2006	2007
33%	42%	51%	61%	77%

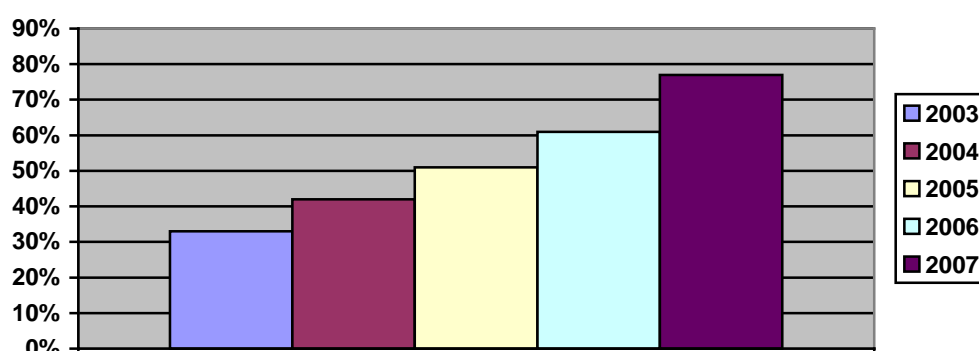


Figure 1-3-2 shows household broadband penetration

Broadband penetration is also on the uptrend as can be seen in table 1-3-2 and figure 1-3-2. From a low of just over 30% of all households, it has shot up to more than 70% in a short span of four years. As higher quality programs and services are provided online, the demand for broadband will continue to increase and the uptrend could be rapid.

² [IDA's Infocomm Usage - Households & Individuals,](http://www.ida.gov.sg/Publications/20070822125451.aspx#usageHse2b)
<http://www.ida.gov.sg/Publications/20070822125451.aspx#usageHse2b>

ii) Key findings from the IDA Annual Survey on infocomm usage in households and by individuals for 2007:

- In 2007, 35% of internet users aged 15 and above shopped online.
- In 2007, 71% of internet users aged 15-59 installed a firewall, 84% anti-virus software, 52% anti-spyware, and 44% anti-spam.
- Most people in Singapore accessed the internet from home (93%), followed by place of work (55%) and place of education (24%).
- Singapore has also a high frequency of internet usage, as 71% of the respondents used the internet at least once a day.
- Very interestingly, none of the respondents indicated that they did not use the internet due to concerns over privacy abuse issues or security.
- That many people do not see the need for anti-virus software appears to be the biggest reason why people in Singapore do not have such software.
- Communication is the main reason why people in Singapore use the internet; banking and internet shopping rank pretty low. It is interesting to note though that those aged 25-34 are more likely to use the internet for banking purposes (35%). This demographic is essentially the first batch of people who can be said to have grown up using the computer and the internet.
- A lot of online shoppers buy tickets for entertainment events and clothing, etc. via the internet.
- The most common method of online payment is the credit card.
- Most people indicated no interest in shopping online and indicated that they preferred to shop in person. This could be due to the fact that Singapore is small and goods and services are easily available physically. Trust, security and privacy concerns rank relatively low on the scale of why people do not shop online (all below 15%).

iii) Online shopping

Table 1-3-3 shows the percentage of online purchasers (15 years and above)³

³ [IDA's Infocomm Usage in Households and Individuals for 2007](http://www.ida.gov.sg/doc/Publications/Publications_Level2/20061205092557/ASInfoCommUsageHseholds07.pdf),
http://www.ida.gov.sg/doc/Publications/Publications_Level2/20061205092557/ASInfoCommUsageHseholds07.pdf

2003	2004	2005	2006	2007
17%	27%	27%	30%	35%

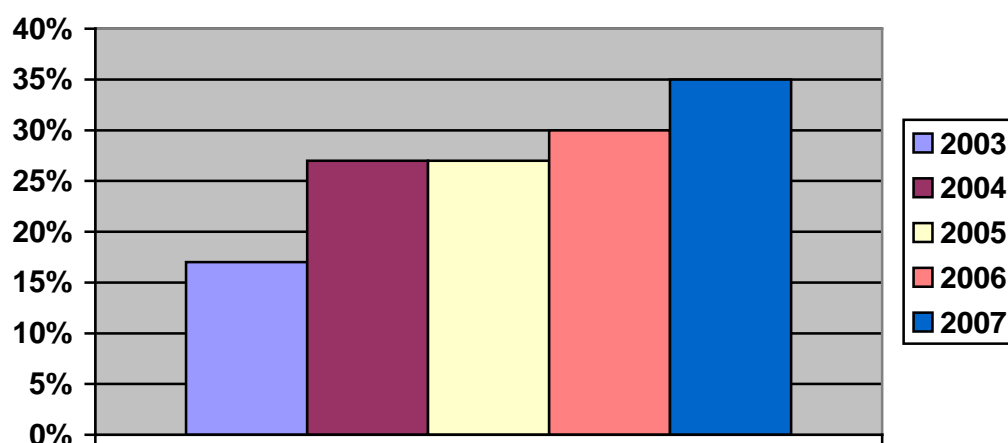


Figure 1-3-3 shows the percentage of online purchasers (15 years & above)

Table 1-3-4 shows the percentage of internet purchasers by age group (2007)⁴

15 to 29 years	25 to 34 years	35 to 49 years	50 to 59 years	60 years and above
29%	48%	36%	30%	28%

Table 1-3-5 shows usage of internet services by category (2007)⁵

Age Range	25 to 34 years	35 to 49 years	50 to 59 years	60 years and above
For dealing with government/organizations/public authorities	21%	19%	16%	14%
For purchasing or ordering goods and services	35%	29%	24%	15%
For online banking	8%	7%	6%	5%

⁴ [IDA's Infocomm Usage in Households and Individuals for 2007](http://www.ida.gov.sg/doc/Publications/Publications_Level2/20061205092557/ASInfoCommUsageHsholds07.pdf),
http://www.ida.gov.sg/doc/Publications/Publications_Level2/20061205092557/ASInfoCommUsageHsholds07.pdf

⁵ [IDA's Infocomm Usage in Households and Individuals for 2007](http://www.ida.gov.sg/doc/Publications/Publications_Level2/20061205092557/ASInfoCommUsageHsholds07.pdf)

(3) Legal systems related to e-commerce

There is no one specific act that covers consumer protection for all transactions. Consumer protection provisions are found in various acts passed by Parliament at different points in time and each of the acts was put in place to address a specific need in our country. Therefore, to have an overview of consumer protection, we need to look at the various relevant acts in the country to have a more complete picture of the state of consumer protection legislation in Singapore.

i) Computer Misuse Act

- The Act came into force on 1 August 1998 to put in place legislation to address issues of computer misuse.
- The list of offences under the Act:
 - o Unauthorised access to computer material
 - o Access with intent to commit or facilitate commission of an offence
 - o Unauthorised modification of computer material
 - o Unauthorised use or interception of computer services
 - o Unauthorised obstruction of the use of a computer
 - o Unauthorised disclosure of an access code
- Furthermore:
 - o There is enhanced punishment for offences involving protected computers
 - o Abetments and attempts are also punishable as offences

ii) Spam Control Act

- This Act came into force on 15 June 2007 to regulate the dissemination of commercial information in the marketplace.
- Some of the requirements of the Act
 - o An <ADV> label is required for advertisements sent via email and short message service (SMS)
 - o Information should not be misleading
 - o Email addresses and phone numbers must appear to allow recipients to “opt out”
- Exemptions:

- Messages sent out by authorised government agencies pertaining to public emergency, public interest or in the interests of public security or national defence

iii) Consumer Protection Fair Trading Act

- The Act came into force on 1 March 2004 to give consumers the right to seek redress for unfair practices as defined in the Act.
- There are four broad definitions of unfair 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 to reasonably know that the consumer:
 - Is not in a position to protect his own interest
 - Is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction
- There are 20 unfair trade practices specified in the schedule of the Act:
 - 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 prices have been discounted when they have not
 - Charging a price higher than what was estimated by the seller, unless both parties had agreed upon the final price earlier
 - Claiming that a product comes with a warranty when it does not
 - Presenting 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
- Using small print to hide facts from consumers
- Falsely claiming that someone 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

iv) Sales of Goods Act

- This is an English law that is applied in Singapore by virtue of the Application of English Law Act passed on 12 November 1993.
 - o It consolidates the law relating to the sale of goods.
 - o It stipulates that goods should be of merchantable quality.
 - o It requires that goods must fit the purpose for which they are purchased.
 - o It stipulates the remedies available to buyers and sellers should there be a breach of contract.

v) Unfair Contract Terms Act

- This is an English law that is applied in Singapore by virtue of the Application of English Law Act passed on 12 November 1993.
 - o It limits the extent to which civil liability can be avoided by means of contract terms.
 - o It states that liability cannot be excluded or restricted for death or personal injury resulting from negligence.

vi) Contract law

- There is no specific Act for contract law.
- A contract usually starts with an invitation to treat.

- An offer is then made, and upon acceptance of an offer, this constitutes a binding contract.

vii) Hire-Purchase Act

- The Act came into force on 15 October 1969 to regulate the form and contents of hire-purchase agreements and the rights and duties of parties.
 - o Every hire-purchase agreement shall be in writing and in the English language.
 - o The number of installments to be paid under the agreement must be specified.
 - o A description of the goods sufficient to identify them must be included.
 - o There is an implied warranty that the hirer shall have and enjoy quiet possession of the goods.
 - o There is an implied condition that the owner shall have the right to sell the goods when the property (title) is to pass.
 - o Written notice is to be given to the hirer before the goods can be repossessed, at least seven working days.

viii) Singapore Code of Advertising Practice (SCAP)

- First published in 1976
- Current edition is the 3rd Edition (published in February 2008)
- All advertisements should be legal, decent, honest, and truthful
- If the advertisement is found to be misleading, it will – with the help of the website owner – be suspended with immediate effect
- Some relevant guidelines:
 - o Advertisers should store consumer data no longer than is necessary to allow proper handling of an order, unless otherwise agreed by the consumer.
 - o Advertisers who offer products or services should provide a message of confirmation to the user on the purchase and allow the consumer to review the purchase.
 - o Commercial messages should only be posted to news groups, forums, bulletin boards or blogs that bear some relation to the content of the commercial message.

- Off-topic commercial messages are only appropriate when the conference administrator or systems operator has specifically made such messages allowable.

ix) Self-regulation

(a) Trustmark

The Trustmark system is a voluntary scheme for businesses that want to have an endorsement of their ethical business practices. About 500 companies have qualified to display the Singapore National Trustmark, called the TrustSg mark. To obtain this mark, companies are required to pass a vigorous assessment process carried out by an independent assessment body. The companies need to have complied with a set of standard criteria before they can obtain the Trustmark. They have to have clear information dissemination on the website, have a clear refund policy, agree to abide by a code of data protection and have in place a proper dispute resolution mechanism.

Table 1-3-6 shows a breakdown according to the type of companies that have obtained the Trustsg mark.

Table 1-3-6 Types of companies that have obtained the Trustsg mark

Books	9
Entertainment	26
Fashion	38
Flowers & Gifts	37
Food & Grocery	17
General	261
IT/Electronics	100
Travel	17

- TrustSg is an initiative by the National Trust Council of Singapore, formed with the mission to build confidence amongst businesses and consumers to spur e-commerce growth in Singapore.
- CASE is the first Authorised Code Owner to issue the TrustSg seal with CaseTrust to e-businesses with sound e-commerce practices.
E-commerce applicants are concurrently awarded with the TrustSg seal.

- Merchants applying for CaseTrust & TrustSg seal would have to pass the following stringent criteria:
 - o Sufficient information about goods and services is available to help consumers make an informed buying decision;
 - o Personal data will be protected;
 - o Payment will be handled in a secure manner;
 - o Purchases will be delivered in a safe and punctual manner;
 - o The retailer's cancellation and refund policies are clearly stated; and
 - o The retailer will promptly address complaints (if made).

(b) Advertising Standards Authority of Singapore (ASAS)

- This is a council set up by the Consumer Association of Singapore to oversee the proper dissemination of information in all advertisements in our local media including print, radio, TV and internet websites (set up by local companies).
 - o It has put in place a code of practice called the Singapore Code of Advertising Practice (SCAP).
 - o All advertisements in Singapore are expected to abide by this code and any deviation will result in the advertisement being banned or suspended until there is compliance with the code. Advertisements that are found to be misleading will not be allowed to be published, aired or shown on TV.
 - o ASAS is a self regulating body comprising major media owners.
 - o Consumers can complain to ASAS if they find any unethical or misleading advertisements.
 - o About 500 complaints are received each year.

(4) Efforts to Build Confidence in E-Commerce

Alternative Dispute Resolution (ADR)

There are various avenues that consumers can use to seek redress besides the Singapore magistrate and high courts. Pursuing a matter in the magistrate and high court is expensive and it may not make economic sense for any consumer who has a dispute on a low value transaction to seek redress there. Therefore, various relevant parties have put in place low cost alternative dispute resolution (ADR) mechanisms to deal with low cost transactions. About 24 years ago, CASE advocated for the setting up of a dispute

resolution process and the government agreed and decided to set up the Small Claim Tribunal (SCT). Besides the SCT, CASE has set up a CASE Mediation Centre. In addition, there are other mediation facilities set up by other trade associations to deal with complaints, and consumers can also take advantage of these. Many non-government organizations (NGOs) do provide for ADR within their trade associations.

i) Small Claim Tribunal (SCT)

- The SCT was set up on 1st February 1985 with the enactment of the Small Claim Tribunal Act.
 - o The SCT was set up to help resolve disputes in a quick and inexpensive manner.
 - o Claims not exceeding \$20,000 can be filed.
 - o Judgments or orders given at the SCT are enforceable by law.
 - o Bailiffs can be engaged to seize property if the vendor fails to comply with the order.

ii) Consumer Association of Singapore (CASE)

- CASE is a consumer body that was set up in 1971 to protect consumer interests.
 - o It handles consumer complaints and helps consumers to negotiate for amicable settlement.
 - o Complaints handled have been increasing over the years:
 - 2006: 18,000 complaints received
 - 2007: 20,000 complaints received
 - 2008: 23,000 complaints received
 - o It has a Mediation Centre which has a pool of 200 trained volunteers to conduct mediation sessions.
 - o Mediation sessions are usually done in the evenings and on Saturdays.
 - o Agreement signed upon settlement constitutes a contract and is enforceable in a court of law.
 - o CASE has also signed a bilateral Memorandum of Understanding (MOU) with the China Consumer Association and India Consumer Council, aimed at helping each other's

consumers to seek redress in the country where the transaction is conducted.

iii) Singapore Tourism Board (STB)

- The STB is a Statutory Board set up by the government to promote tourism in Singapore.
 - o It helps short-term tourists in Singapore to resolve disputes with vendors in Singapore.
 - o It can stand as proxy for the tourist at the SCT.
 - o It can make a request for a quick hearing at the SCT when the tourist is still in Singapore.
 - o It is also a specified body under the Consumer Protection Fair Trading Act (CPFTA) that can take up injunctions against vendors who breach this act.

iv) Financial Disputes Resolution Centre (FIDReC)

- The Centre was officially launched on 31st Aug 2005.
 - o 380 financial institutions in Singapore have signed up as members.
 - o The Centre deals mainly with financial disputes involving claims up to \$100,000 for insurance and up to \$50,000 for banks.
 - o Mediation is free but if the case is escalated to adjudication, consumers need to pay \$50 and the financial institution needs to pay \$500.
 - o The decision of the adjudicator is binding on the financial institution but not on the consumers, who could seek alternative redress avenues if they are not comfortable with the adjudicator's decision.

v) Small Claim Commercial Mediation Scheme (SCCMS)

- The SCCMS is a centre set up by the Singapore Mediation Centre.
 - o It takes on claims that are \$30,000 or less.
 - o It is meant for cases referred to the court and involving small value contracts.

- It seeks to help parties to avoid expensive litigation and prolonged confrontation.
- Consultation service is provided for a fee of \$10.
- The centre will charge \$25 as a mediation fee (a rebate of \$10 will be given to parties who paid the consultation fee).

vi) Dispute Resolution for CaseTrust/TrustSg accredited organizations

- CaseTrusted merchants are required to have a proper dispute resolution in place in their own premises to deal with complaints. This is part of the requirement of accreditation.
 - They are expected to handle disputes expeditiously whenever a claim is made against them.
 - They are required to subject themselves to mediation if they are unable to resolve their own disputes internally.

vii) Other dispute resolution mechanisms

- There are other dispute resolution mechanisms set up by trade bodies.
 - Such bodies are basically funded by the trade bodies themselves.
 - Fees vary from one NGO to another.
 - These mechanisms cater mainly to their members who have disputes with consumers.
 - Agreement reached in such centres may or may not be enforceable in courts.

(5) Conclusion & comments on international e-commerce and cooperation

We do have pervasive use of internet for various functions. Our government has taken full advantage of the technology and has moved ahead to introduce online services in most of its dealings with the population, ranging from application of licenses to payment of fines or levies etc. The whole population is fully wired and broadband usage is pervasive. It is an ideal place for internet commerce to thrive. As such, many businesses do provide goods and services online. Our laws to protect consumers' interests are reasonably adequate, and although the provisions to protect consumers' interest do not reside in one piece of legislation, they are available in the various pieces of legislations enacted in Singapore. Self-regulation does help to ensure that disputes are expeditiously dealt with. Voluntary efforts to

establish processes that ensure fair and ethical business practices are useful and have been successful in preventing pervasive malpractices. Avenues to seek redress are not lacking and are adequate, and parties are putting in their best effort to help aggrieved consumers to resolve their disputes with vendors in Singapore. The ICA-net system, once in full swing, will be able to ride on our existing system to deal with dispute resolution.

References

- Infocom Authority of Singapore IDA Survey 2004, 2005, 2006, 2007 and 2008
- Internet websites
- [.stb.gov.sg](http://stb.gov.sg)
- [.case.org.sg](http://case.org.sg)
- [.fidrec.com.sg](http://fidrec.com.sg)
- [.mediation.com.sg](http://mediation.com.sg)
- [.lawonline.com.sg](http://lawonline.com.sg)
- [.subcourt.gov.sg](http://subcourt.gov.sg)

1.4. Thailand

(1) E-commerce market

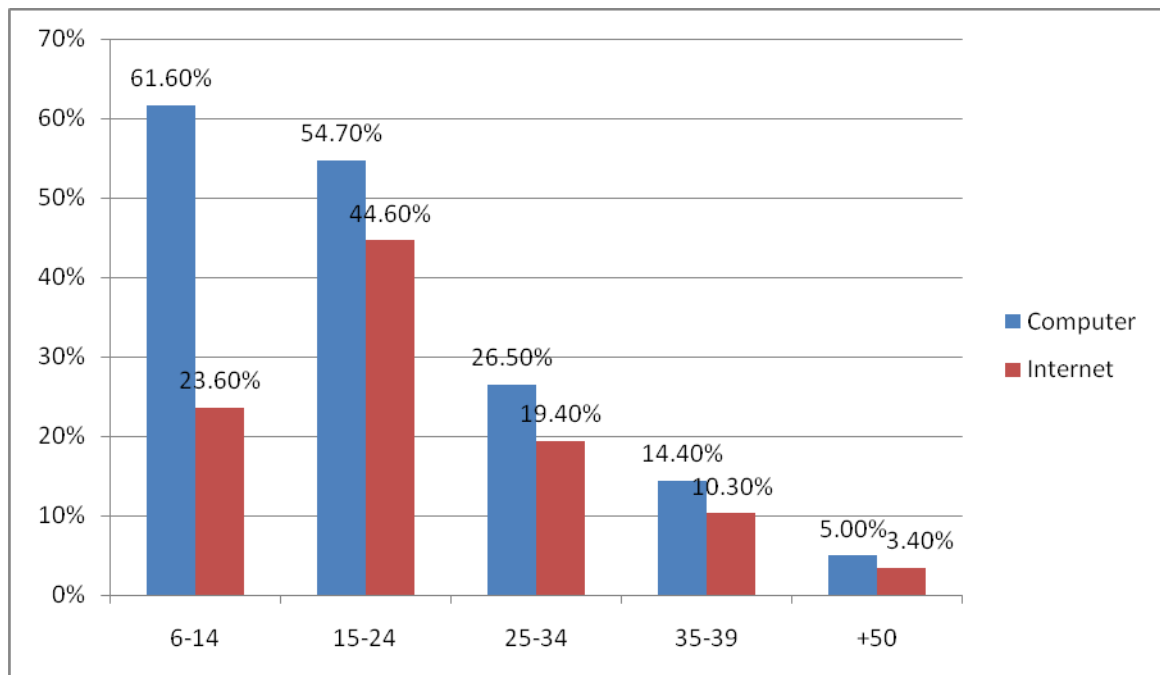
i) Use of computers and the internet

(a) The number of computer and internet users

The population whose age is above 6 years old is around 60.35 million. Among people living in Bangkok, there are 6.45 million people using computers and 2.82 million people using the internet. Among the 14.96 million people living in the central region, about 4.27 million people are using computers, while around 2.69 million people are using the internet. There are 10.78 million people living in the north part, of whom about 2.93 million people are using computers and 1.92 million people are using the internet. Among the 20.5 million people living in the north eastern region, there are 4.83 million computer users and 2.78 million internet users. In the southern region, there is a population of 8.11 million people, of which around 2.15 million people are using computers and 1.25 million people are using the internet.

(b) Age of users

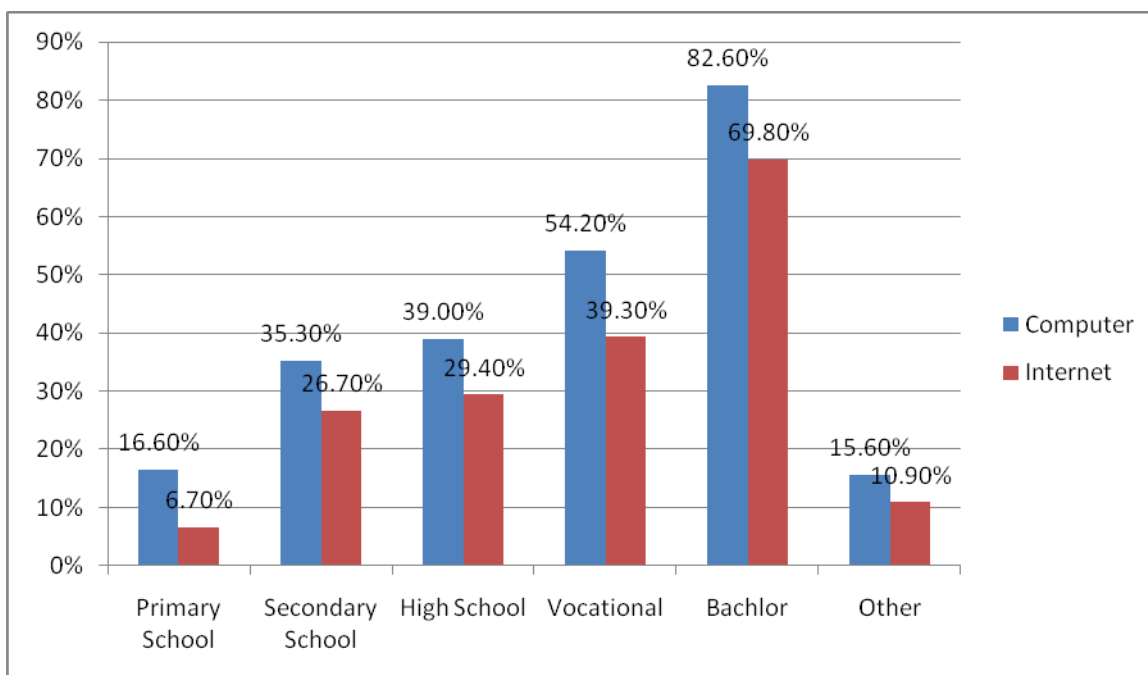
People whose ages are 6-14 years old use computers more than any other group. The population between the ages of 15-24 is the group that uses the internet most.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(c) The education level of users

People who have undergraduate degrees use computers and the internet the most. Those who have vocational degrees come in second place in terms of use of computers and the internet.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(d) The occupation of internet users

The survey targeted people who are older than 15 years old. During the last 12 months, there were 37.27 million people older than 15 in every occupation.

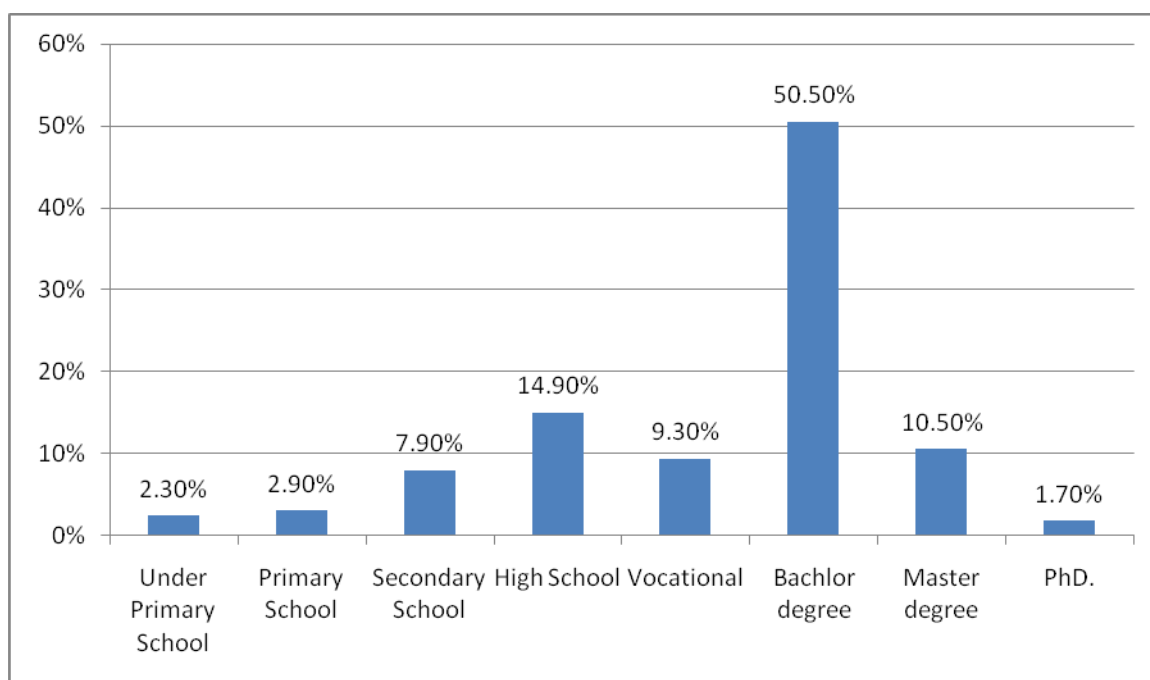
Occupation	Employee (1,000 people)	Percentage of Employee	
		Using Computer	Using Internet
Total	37,274.6	18.7	13.2
Government Officer	1,060.4	46.3	37.5
Vocational	1,479.4	91.4	78.6
Technical Vocational	1,592.7	72.2	55.2
Clerk	1,435.5	75.3	57.1
General Staff	6,190.4	19.8	13.0
Agriculture Section	13,018.8	3.9	2.1
Other	12,497.4	8.3	4.6

Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(e) Online purchasing behaviour

The National Statistic Institute surveyed 10.96 million people who are over 6 years old. The result showed that 10.7 million people have never bought goods and services via the internet. Only 2.4% have bought goods and services via the internet.

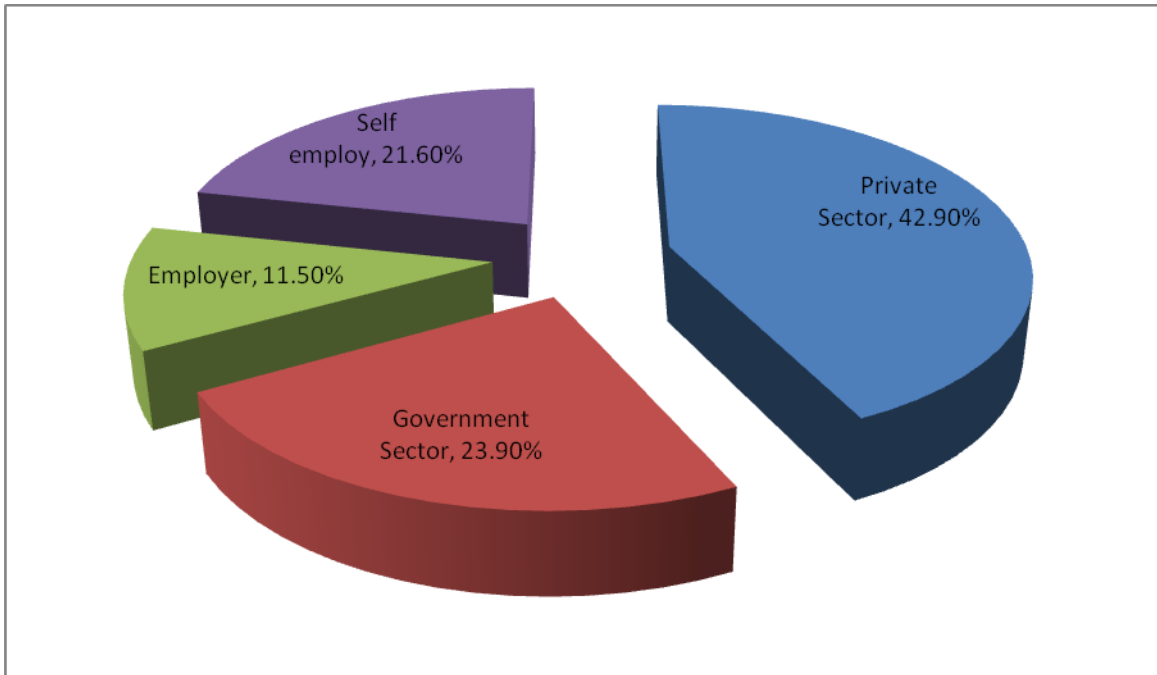
People between the ages of 25 to 29 years old were the largest group of buyers of goods and services online. 50% of online buyers hold bachelor's degrees.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(f) Occupation status

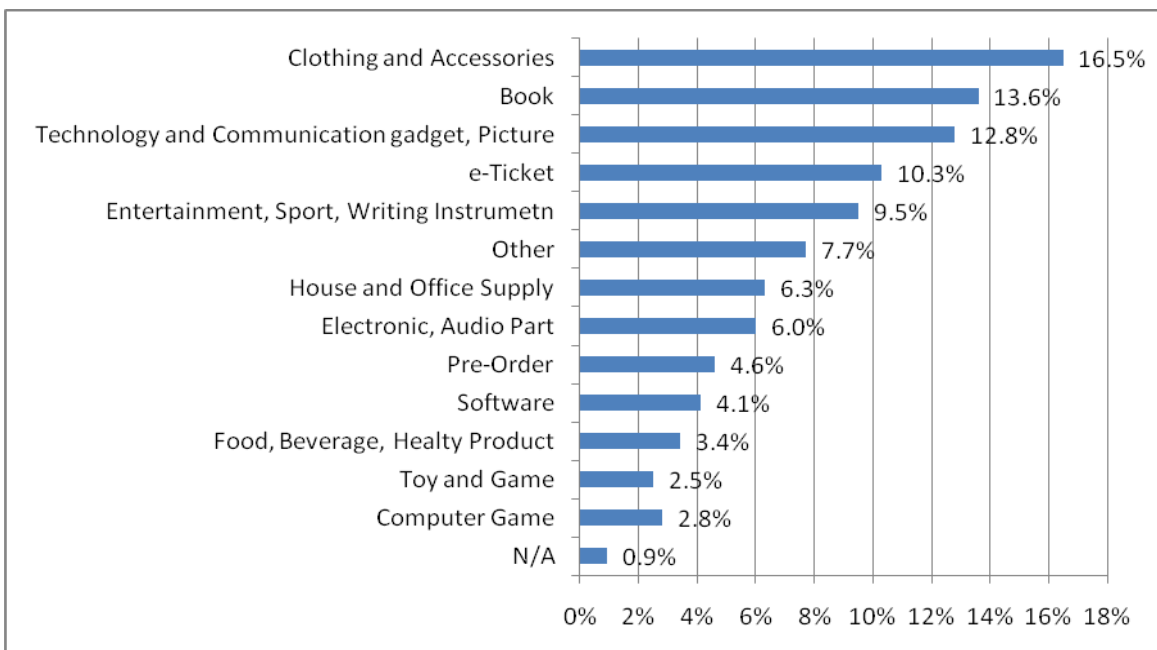
People working in the private sector who bought goods and services on the internet amounted to 42.9%, and people working in government ranked in second place at 20.3%.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(g) Products and services bought via the internet

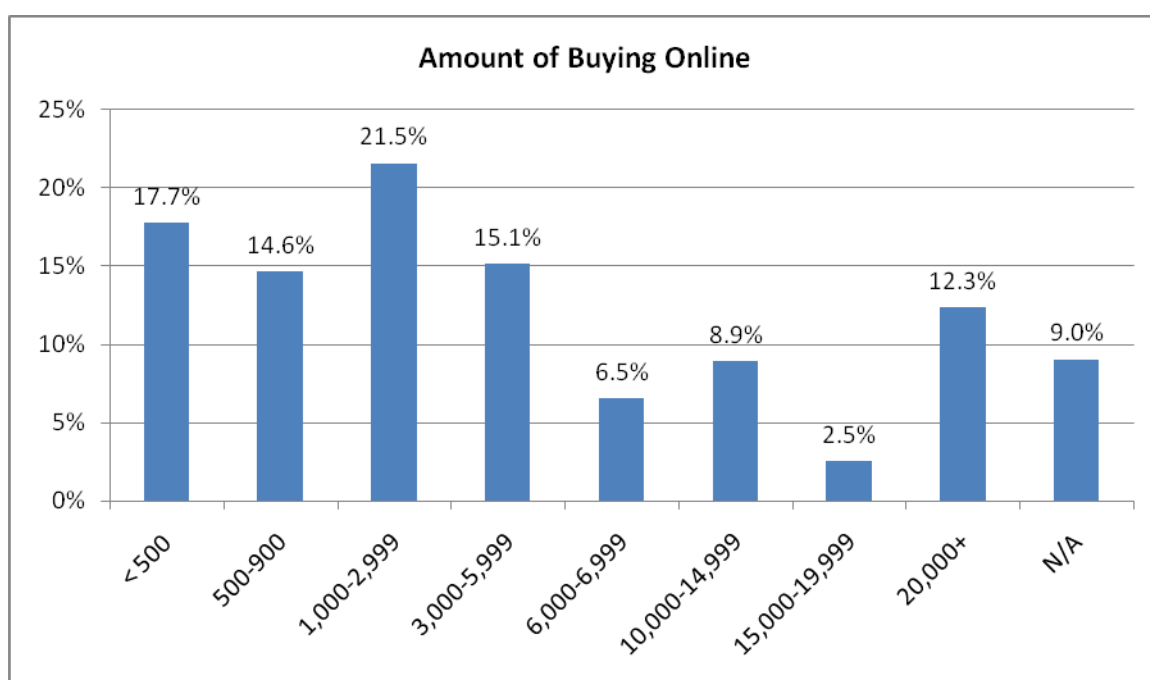
Clothing and clothing accessories were the categories of products most purchased via the internet. The figure for clothing and clothing accessories was 16.5%, and books came in second place at 13.6%.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(h) The value of purchases made online

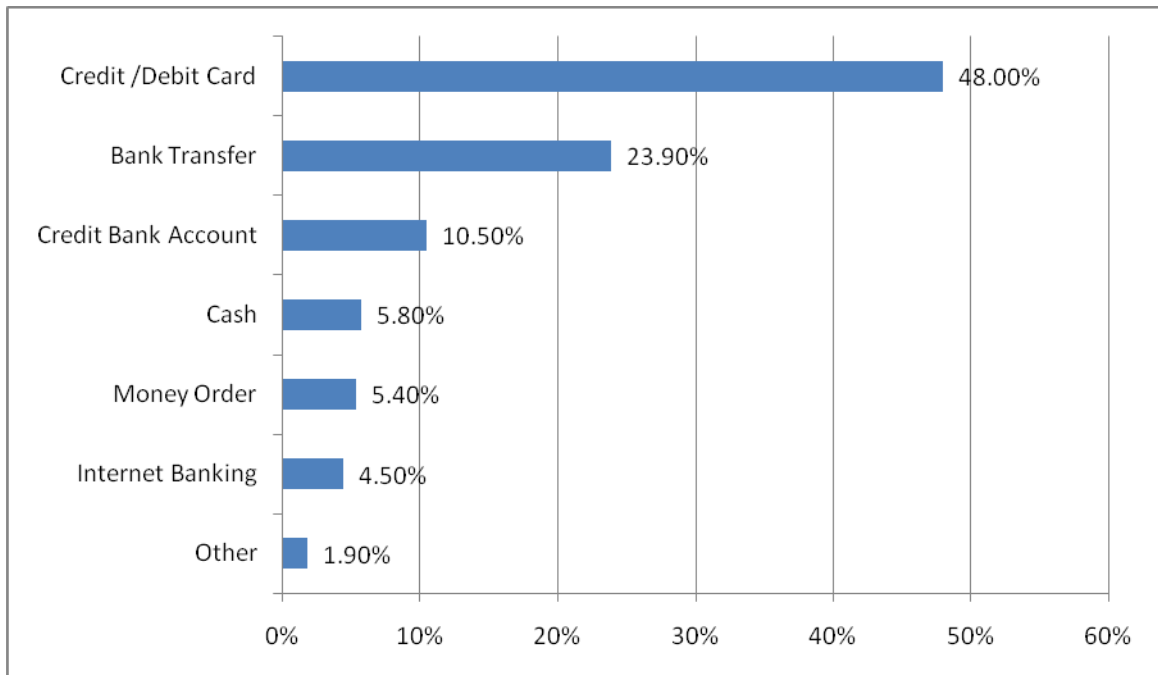
The value of purchases made online in Thailand is not much. Usually people buy goods and services with a value of not more than 6,000 baht. Purchases that correspond to this category amount to 68.9%.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(i) The method of payment

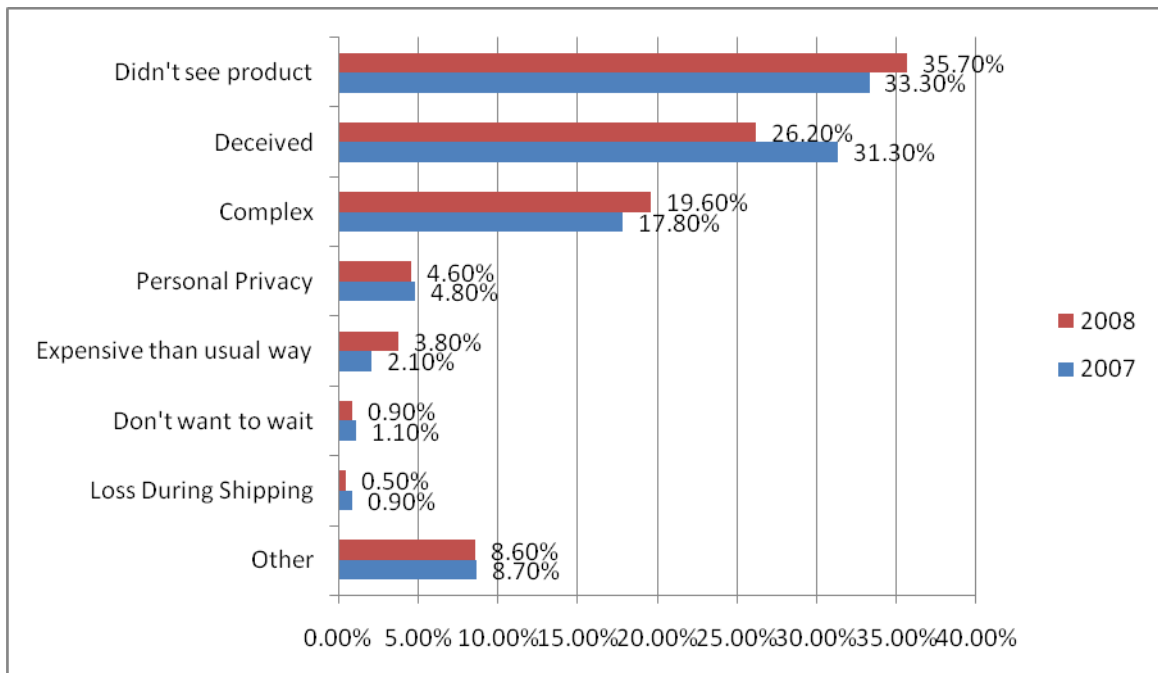
The most popular method used to make payments is credit / debit card. The second most popular method is transferring money by bank account.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(j) Reasons for not buying online

Most people are afraid of buying online because they worry that they may be deceived by other people.



Source : "Thailand e-Commerce Forum 2008" ([://www.nso.go.th](http://www.nso.go.th))

(2) Efforts to build confidence in e-commerce

i) E-commerce registration

Legal System Related to E-Commerce

Business registration and commercial registration under the Commercial Registration Act 1952

1. Who has to apply for the commercial registration

An ordinary individual or group (ordinary partnership) or any juristic person including any juristic person that is established under other countries' laws and that sets its branch(es) in Thailand and operates any business as stipulated in the ministerial order of Ministry of Commerce is the one who has to apply for the commercial registration.

2. Enterprises that need to be registered

The Minister of Commerce orders the following entrepreneurs to apply for the commercial registration:

- (1) Entrepreneurs of rice mills and sawdust mills that use machinery.
- (2) Any entrepreneur who trades any or many goods that have a sale income of over 20 baht, or who has total goods selling over 500 baht
- (3) Any broker or sale agent that does any operation upon any or many goods and where such goods totally cost more than 20 baht a day.
- (4) Any entrepreneur who does any or many craft(s) or industry(ies) and sells products in a day with a total over 20 baht or in any day can produce goods that totally cost over 500 baht.
- (5) Any entrepreneur who operates transportation by water, by steam ship or by motor boat, by train, by streetcar, by bus, and operates an auction, trades land, lends money, exchanges and trades foreign money, banking bills, bill of exchange and operates a pawnshop and hotel.
- (6) Any entrepreneur who lends cassette tapes, video tapes, musical CD, VCD, DVD for entertainment only.

3. Enterprises exempt from commercial registration

Some enterprises are exempt from commercial registration:

- (1) Ambulating trading, stall trading
- (2) Enterprises for maintaining religions or for charity

- (3) Enterprises of any juristic person as stipulated in Acts or Royal Decrees
- (4) Enterprises of Minister, Government Bureau, Government Department
- (5) Enterprises of foundations, associations, cooperatives
- (6) Enterprises that the Minister declares in the Government Gazette

An Announcement of Ministry of Commerce stipulates that any registered partnership or company limited under the Civil and Commercial Code (in the section of partnership/company), that submits the form of enterprise of partnership/company limited (Form Sor Sor Chor 1) to the partnership/company registrar, does not have to register for a commercial certificate. This also includes the enterprises of farmer groups that registered under Revolutionary Announcement No. 141, except for the registered partnership, company limited and public company limited that trade or lend musical cassettes, video tapes, musical CD VCD, DVD for entertainment.

4. Registration for changing information or dissolving enterprises

In case there is a change in the registered items, or a dissolving of an enterprise, the entrepreneur has to submit a registration. Items that must be submitted when they are changed are as follows:

- (1) dissolving and /or expansion of some part of an enterprise
- (2) changing a business name
- (3) displacement of the head office
- (4) changing a manager
- (5) transferring the owner or the manager to a new address
- (6) increasing or reducing capital
- (7) displacement, dissolving or expansion of branch(es), warehouse(s), and sale agent(s)
- (8) others, for example the change of name or surname of the manager, incorrect registered items, etc

5. Where to register

5.1 In Bangkok

Business Registration Service Office 1-7 and The Part of Central Business Registration

5.2 Other provinces

5.2.1 The Provincial Business Development Office

- a) conducts the registration for an enterprise of which the head office is located in the same district as the registration office

(normally, the registration office is situated in Muang district) except for these following provinces of which the business registration offices are situated in different districts from the business development offices:

(1) Trang provincial business development office, which conducts business registration, has its head offices in Muang Trang district and Kan Tang district

(2) Nakhon Si Thammarat provincial business development office, which conducts business registration, has its head offices in Muang Nakhon Si Thammarat district and Pak Panang district

(3) Phuket provincial business development office, which conducts business registration throughout Phuket province

(4) Songkha provincial business development office, which conducts business registration, has its head offices in Muang Songkha district and Had Yai district

(5) Ubon Racha Thani provincial business development office, which conducts business registration, has its head offices in Ubon Racha Thani Muang district and Warin Chamrab district

b) conducts business registration for enterprises that distribute or lend musical cassette tapes, musical CD, VCD, and DVD for entertainment only. This kind of enterprise has its head office in the area of those provinces.

5.2.2 The district office and sub-district office conduct business registration for enterprises that have head offices in those districts or sub-districts except the districts mentioned in 5.2.1.

5.3 In case a juristic person has a head office abroad and has branches for operation of its enterprise in Thailand, the head branch office submits the registration at the commercial registration office in its area.

6. Fees

The fees for each type of registration according to the Commercial Registration Act are as follows:

(1) New business registration: 50 baht

- (2) Registration for changing items: 20 baht/a time
- (3) Registration for enterprise dissolving: 20 baht
- (4) Issuing a substitute for the commercial registration certificate: 30 baht/ per substitute
- (5) Requesting the inspection of entrepreneur's documents: 20 baht/ per time
- (6) Requesting the officer to make and certify the copy of a document: 30 baht/ per document

7. Time limits for business registration

- (1) For a new registration, the enterprise has to be registered within 30 days from the commencement of the operation.
- (2) Any change from the information in (1) must be registered within 30 days from the changing date.
- (3) A dissolved enterprise has to be registered within 30 days from the terminating date.
- (4) In case of a loss of the certificate of business registration, a request for a substitute certificate must be done in 30 days from the date the loss is known.

8. Duties of an entrepreneur

- (1) Apply for registration to the registrar within the period mentioned in 7
- (2) Display the certificate of business registration or the substitute at the office where it can be disclosed and easily seen.
- (3) Arrange for a business name sign in front of the head office and the branch office(s) within 30 days from the registering date. The sign must be written in Thai language and must be obviously and easily read. A sign in Roman script can be included and has to be written identically to the registered business name. The branch office must have the word "branch"
- (4) Inform the fact of registered items as the order of the registrar
- (5) Accommodate the registrar and the officer(s) who perform their duties in the office of the entrepreneur

9. Punishment

- (1) Operating a business without registering, giving evidence and with untrue information, and not allowing the officers to inspect the office are considered illegal and the entrepreneur must be fined at a maximum of 2000 baht. In the case of not registering, when guilty, the entrepreneur is liable to a maximum fine of 100 baht a day until correcting the performance under the Act.

(2) Loss of the certificate, not requesting a substitute, not displaying the certificate in a place easily seen, and not arranging a business name sign are considered illegal and will face fines at a maximum of 200 baht. In case of continued guilt, the entrepreneur must be responsible for the fine at a maximum of 20 baht a day until correct performance is shown.

(3) For entrepreneurs who defraud the public, combine goods with a will to mingle goods, counterfeit goods or do other severe dishonest operations in his/her enterprise, their certificate will be revoked. After the certificate is revoked, the entrepreneur cannot operate his/her business except when permitted by the Minister of Commerce to register again.

(4) The entrepreneur whose certificate is revoked and still operates the business will be liable to a fine at a maximum of 10,000 baht or imprisoned at a maximum of one year, or both fined and imprisoned.

ii) Trustmark

Qualifications of Trustmark Applicants:.

1. Being a legal person
2. Being registered as an e-commerce operator for at least 6 months
3. Being the owner of the domain name
4. Having prescribed criteria for Trustmark application

Criteria for Trustmark application

Eight criteria, consisting of

(a) Operational transparency for operators of e-commerce

Your website possesses initial necessary data such as address, telephone number, method of connectivity, etc. to show your real existence and to allow consumers to make contacts and inquiries.

(b) Advertising and marketing practices

Advertising, trading, and presentation of products/services shall be in appropriate designs

No cheating or misrepresenting products/services, including using any technology to mislead on the important substance of products/services

(c) Provision of adequate and timely information about offers

Your website shall have clear information for decision making on information about products/services

- Prices of products/services (clearly mentioning any additional costs such as tax, delivery service etc.)
- Payment method and credit for products/services
- Other necessary information such as conditions of warrantee, return or exchange of products, etc.

(d) Acknowledgement of order and fulfillment

- Your website shall have a repeat and confirmation system of orders and an alternative choice to cancel or confirm order
- Your website should have an order form and clear filling instructions and a confirmation form for the transaction
- There shall be clear information on the order fulfilment and time, and this shall be fulfilled within the specified time.

(e) Transactional security

Your website shall have measures on the transactional security of buyers or sellers, in which standard data shall be secured in an acceptable manner befitting data collected or transmitted.

(f) Consumer privacy

Your website shall indicate privacy policy in a place where customers can easily see and search for the information.

(g) Consumer inquiries and complaints

Your website shall provide a communication channel for connections and inquiries, and a process to handle complaints and responses to complaints or inquiries within 7 days from the date of complaint or inquiry

(h) Protection of rights of children and youth

In cases when your website offers products or services affecting children or youth, there must be a warning message on the website to protect the rights of children and youth, such as prohibition of sales of whiskey and tobacco to children below the age of 18 years old. Further, children and youth not yet mature enough to buy products or services may only do so with prior permission from parents, and children and youth are not to go out to meet strangers alone without accompanying parents, etc.

(3) Need for international e-commerce and cooperation

The Department of Business Development (DBD) has set up a Trustmark under the name “Trustmarkthai.com”. However, the criteria for application of Trustmark is based on the Asia Trustmark Alliance (ATA).

DBD also joined the meeting as an observer. DBD would like to join other organizations that might be benefit or create customer confidence.

1.5. Vietnam

(1) E-commerce market

i) Vietnam e-commerce development has achieved major goals

Since 2005, the E-Transaction Law was approved by the Vietnam National Assembly and the Master Plan on E-Commerce Development in the 2006-2010 Period was signed by the Vietnamese Prime Minister (promulgated under Decision No. 222/2005/QD-TTg dated 15/9/2005). The E-Transaction Law is the first and basic legal framework for all electronic transactions in society, and the Master Plan on E-Commerce Development is the state's first macro policy that is comprehensively orientated, containing specific solutions and action programs, with a view to enhancing e-commerce development throughout the nation. The Master Plan sets a foundation for the implementation of several activities related to e-commerce over a five year period, and contributes to bringing the E-Transaction Law to life through specific policies and solutions in economic and commercial fields.

To fulfill the tasks assigned by the Prime Minister, ministries and agencies have actively carried out the activities set out in the Master Plan. Also, localities throughout the nation have promptly developed plans for implementing Decision No. 222. Now, there are 50 out of 63 provinces and cities under central authority that have formulated local e-commerce implementation plans and that have been approved by the relevant provincial People's Committee.

Following-up on the implementation of Decision no. 222 assigned by the Government, the former Ministry of Trade (and now Ministry of Industry and Trade - MOIT), which is responsible for functions related to e-commerce, issued Directive No. 14/2006/CT-BTM (dated 6/12/2006) on the implementation of the Master Plan on E-Commerce Development in the trade sector. Ministerial units were assigned specifically to deploy the following nine major activities: 1) training and awareness raising on e-commerce; 2) completing the legal system for e-commerce; 3) providing online trade public services; 4) developing support technologies; 5)

enforcing legal regulations relating to e-commerce; 6) enhancing international cooperation on e-commerce; 7) implementing state management on local e-commerce; 8) supporting enterprises to apply e-commerce in business operations; and 9) enhancing e-commerce study activities.

With functions to establish the environment for e-commerce development, state agencies have responsibilities for leading the implementation of e-commerce activities and enhancing the provision of support and public services provided for e-commerce to realize e-commerce development objectives up to the year 2010 as follows: *“Up to 2010, government agencies shall bring all public services online, in which services of electronic taxation, customs, export and import procedures, procedures relating to investment and electronic business registration, professional commercial licenses and dispute settlement procedures are given priority”* (The 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).

Today, despite opportunities and challenges that have arisen following Vietnam’s accession to the World Trade Organization (WTO), the results achieved over the past few years stemming from the implementation of the E-Transaction Law, outstanding improvement of the e-payment infrastructure, and e-commerce best practices among the business community are some positive highlights of the Vietnamese e-commerce picture. *(See more details in the annual Vietnam E-Commerce Report issued by Vietnam Ministry of Industry and Trade (MOIT), which updates the progress of e-commerce in the year and compares progress to previous years – (Source: moit.gov.vn).*

Based on analysis and evaluation, vigorous movements in 2007-2008 have created strong momentum for Vietnamese e-commerce to continue its steady and substantial growth in the years to come. The first stage for e-commerce development in Vietnam has been completed (since 2005), with e-commerce being 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 year 2006 e-commerce in Vietnam will progress to the second stage of rapid growth. This assertion has been proven true by studies on various aspects of e-commerce applications, particularly the survey on the status of e-commerce conducted amongst approximately 2,000 enterprises

nation-wide each year in 2007 and 2008. Vigorous and comprehensive development of e-commerce during 2006-2008 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. Furthermore, the Vietnam E-Commerce 2008 report presents a panorama of e-commerce development in the past year.

ii) Significant return on investment from e-commerce for enterprises

The brightest hue of the year 2007-2008 picture has been the clear and upward trend of return on investment for e-commerce. Survey results show that more than one third of enterprises yield more than 15% of their revenue from orders placed through electronic channels. Compared with the corresponding rate of 8% of enterprises having the same level of e-commerce revenue in 2005, these statistics show a strong interest from enterprises in e-commerce and their determination to turn its potential to practical efficiency. The most positive sign is that 63% of enterprises are confident about increasing revenue from electronically placed orders in the future.

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 big increase, with 50% of the surveyed enterprises spending more than 5% of their annual operation expenses on e-commerce applications. On the other hand, investment has been structured more appropriately, with about half of total e-commerce or IT expenses invested on hardware and one fifth on training activities. However, the investment rate for e-commerce software and solutions stayed almost unchanged in the past 3 years, at around 23% of total e-commerce expenses, posing a major challenge to various players in the field for increasing this rate in the immediate future.

Market size of e-commerce: The results of the 2007 survey for the different e-commerce models of government-to-business (G2B), business-to-business (B2B), business-to-consumer (B2C), and consumer-to-consumer (C2C) showed that 10.2% of enterprises took part in the domestic and foreign e-marketplaces as compared to 7.9% in 2006.

According to the survey, the biggest contracts reached 10 billion VND. The total of e-commerce transactions in different industries was around 7-10 billion USD. 63% of surveyed enterprises have found business partners in the e-commerce marketplace (*Note: 1USD=17.000 VND, exchange rate in the year 2007*).

The percentage of enterprises in different business fields taking part in e-marketplaces

	% of marketplace participants	% of the total surveyed businesses
Leather and textile	8,1%	5,8%
Forestry and fishery, food processing	6,1%	7,5%
Handicrafts	3,0%	3,9%
Constructions, chemicals and machinery	14,1%	14,8%
E-commerce and ICT services	17,2%	10,6%
Tourism	6,1%	5,1%
Consultancy, law and real estate	6,1%	6,0%
Commerce – services, general services and others	30,3%	29,6%
Other productions	4,0%	15,6%

Source : VietNam E-commerce Report 2007, the survey 2008, MOIT

Jet Star Pacific Airlines company revenue

Revenue gained through e-commerce transactions on the website .pacificairlines.com.vn in 2008: 800 Bill VND.

For the first 6 months of 2008: revenue of Jetstar Pacific Airlines was more than 500 billion VND, and within that amount, online internet orders generated revenues of 100 billion VND.

Estimated revenue in year 2008: 1.200 billion VND through e-commerce transactions on the website .jetstar.com

(*Note: 1USD=17.400 VND, exchange rate in the year 2008*).

Source: Jetstar Pacific Airlines, Vietnam E-Commerce Report 2008

List of airline companies using e-ticket booking in Vietnam

Vietnam Airlines	Malaysia Airlines
Aeroflot	Jetstar Pacific
Cathay Pacific	Thai Airways
China Airlines	United Airlines
China Southern Airlines	Japan Airlines
Eva Airways	Qantas Airways
Korean Air	Singapore Airlines

iii) Improvement of e-payment and internet infrastructure

In recent years, enterprises continuously viewed the lack of a functional e-payment system as the second biggest obstacle to e-commerce development, during surveys conducted from 2005 to 2008. However, the 2007-2008 period has seen rapid, all-round progress in this area. At the macro policy level, at the beginning of year 2007, a significant text related to e-payment came into effect, namely the Prime Minister's Decision 291/2006/QĐ-TTg (dated 29 December 2006) approving the 2006-2010 Plan for Non-Cash Payment Implementation and Vision Towards Year 2020. In the very first year of this plan's implementation, the banking sector recorded several outstanding accomplishments. Firstly, the banking sector has had 15 banks installing and utilizing 4,300 ATMs and 24,000 point of sale (POS) devices. Secondly, 29 banks have issued nearly 8.4 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 magnetic 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 30 banks are providing customers with internet banking and SMS banking services (which allow customers to operate selected banking services over their mobile phones using SMS messaging). Card payment has become more popular, with increasingly diverse applications. Suppliers of electronic payment services expanded to include other types of enterprises, in addition to those offered from banking institutions. Some payment gateway models have been formed and have started to function since

2007, which was the first year when online payment was implemented on some Vietnamese e-commerce websites, namely PacificAirlines, 123mua!, Viettravel and Chodientu (at the corresponding addresses www.pacificairlines.com.vn, www.123mua.com.vn, www.viettravel.com.vn, and www.chodientu.vn).

The increasing number of bank accounts is a good sign for the banking system to develop various payment services. Such services offer an efficient solution to decrease cash in transactions in the future. Therefore, the network of Vietnam's commercial banks must focus more on improving electronic payments when there are more and more individual bank accounts.

Table 1-5-1 Statistics of the bank card market in 2007

Domestic and international cards	8.4 million
Banks issuing cards	29
ATM	4,300
POS	24,000
Enterprises that accept cards	20,000

(By the end of the year 2008 there were 12,4 million domestic and international cards, source: State Bank Report)

Bank alliances: As individual bank accounts increase, and as paying networks and new kinds of new cards are expanding according to customers' demands, the main problem is the link between different banks to cut costs and add more benefits for customers, and the need to improve the efficiency of the banking industry in general.

There are now four bankcard alliances in Vietnam. They are Vietcombank (VCB) Alliance, Vietnam Bankcard Alliances of East Asia Bank, Alliance Banknetvn (consisting of three state-owned banks and other joint stock banks), and ANZ/Sacombank Alliances. In theory, customers can execute transactions using one member bank's card in another member bank's ATM within the same network. However, each member bank offers different services, preventing customers from one member bank from executing money transfers using ATMs of another member within the same network. On 21st April 2007, Vietnam's card paying network was established by successfully connecting the three banks of Vietnam Industrial and

Commercial Bank (Incombank), Bank of Investment and Development of Viet Nam (BIDV) and Saigon Bank for Industry and Trade (Saigon Bank) through the financial switching service of Banknetvn. According to Banknetvn, its system helps card holders to execute transactions on up to 25 thousand ATMs within Banknetvn's network, accounting for 60% of all ATMs nationwide.⁶ After two months of official operation, there were more than 83 thousand transactions with a total amount of up to 23 billion VND on the switching network of four banks from Banknetvn. This amount is likely to increase in the future.

Jeststar Pacific Airlines E-Ticket: According to the International Air Transport Association (IATA), e-tickets help the aviation sector save three billion USD each year, improving competitiveness for aviation corporations. Moreover, buying tickets online helps customers save time as well as other costs.

In early 2007, the Vietnamese aviation sector began e-ticketing. After switching to low fare aviation, Pacific Airlines applied the sale of e-tickets to reduce costs for agents, manage flights more efficiently, and reduce printing costs, etc. For customers, advantages in terms of convenience when booking tickets are obvious, and there has been positive feedback from customers. Pacific Airlines currently uses two payment methods: paying in advance by international cards like Visa, Visa Debit, Master Card, JCB, American Express; and paying in cash. Paying with credit cards is more favorable and accounts for a majority of the payment value of Pacific Airlines. Until 15 December 2007, according to Pacific Airlines reports, approximately 65% of all e-tickets were paid by credit cards. With Techcombank debit in particular, there are approximately 700 transactions each month, and up to now, more than 20,000 customers using cards have booked online.

Games industry: Recently, the Company VCT Infocom announced that the VTC Games industry with its E- Payment Gateway offers many e-services and has around 12 million subscribers (See more at [://paygate.vtc.vn/paygate/](http://paygate.vtc.vn/paygate/))

Internet infrastructure: The following table shown statistics on Vietnam's internet development up to January 2009

⁶ Source: <http://210.245.61.229/vn/home/tinHDNH.jsp?tin=2538>

Statistics on Internet development upto 1/2009		http://www.vnnic.vn
Users	20.894.705	
Users per capita	24.47	%
Total International connection bandwidth of Vietnam	53.659	Mbps
Total domestic connection bandwidth	68.760	Mbps
(Connection bandwidth through VNIX)	25.000	Mbps)
Total VNIX Network Traffic	35.328.591	Gbytes
Dot VN domain names	94.708	
Vietnamese domain names	4.304	
Allocated Ipv4 address	6610944	
Allocated Ipv6 address	42.065.754.112	
Total broad bandwidth Subscribers	2.095.666	

(Source [://www.thongkeinternet.vn/jsp/trangchu/index.jsp](http://www.thongkeinternet.vn/jsp/trangchu/index.jsp))

iv) Awareness raising and training for the next level of e-commerce

E-commerce awareness raising and training activities are continuing to be vigorously promoted throughout the country and have scored significant results. First and foremost, many enterprises have not only recognized the great benefits yielded by e-commerce, but have also seen the need for collaboration and mutual support for 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 Vietnam E-Commerce Forum 2007 (Vebiz), 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 2007, the Ministry of Industry and Trade continued to be active in short-term training for state employees and e-commerce enterprises. Many training courses on e-commerce state management and e-commerce application skills have been conducted, with the coordination and assistance of various provincial

Departments of Trade and other organizations, including the Chamber of Commerce and Industry.

- v) E-commerce development plans formulated and implemented in the many provinces/cities

Despite being based on advanced technology and implemented mostly in cyber space, e-commerce activities cannot be disconnected from geographical locations. The United Nations Commission on International Trade Law (UNCITRAL) model law on e-commerce and Decree 57/2006/ND-CP dated 9 June 2006 clearly stipulate places of business for parties engaged in an e-commerce transaction. State management of e-commerce also cannot achieve high efficiency without active participation of local state management agencies, particularly trade departments in provinces and cities. Such departments advise the provincial People's Committee on state management of e-commerce within the local area, especially on activities concerning strategic implementation of e-commerce development plans and e-commerce legislation, e-commerce awareness raising, business support in e-commerce applications, and enforcement of e-commerce regulations.

By the end of 2008, over 50 provincial People's Committees have approved local plans/programs for e-commerce development towards the year 2010. Another ten plans have been drafted and submitted to the authorities for approval. Many plans are of good quality and high feasibility, e.g. Ho Chi Minh City's E-Commerce Development Program for the 2008-2010 Period or Bac Ninh Province's Plan for 2007-2010 E-Commerce Development.

Table 1-5-2 Growth in the number of provincial websites from 2005 to 2008

Year	2005	2006	2007	2008
Number of provinces/cities having operational websites	49	52	58	59
Rate of provinces/cities having websites	76%	81%	90%	92%

At a high level, the website of the National Assembly at na.gov.vn is also

an important channel for the provision of information on state policies, offering an online dialogue service between state leaders and enterprises and citizens. Furthermore, the government has established its websites at .chinhphu.vn (also can be accessed at .vietnam.gov.vn) and .egov.vn, which provide official information, and public services from the highest executive body. These websites collect databases and links of ministries and agencies and localities all over the country, facilitating organizations and citizens in searching for information from authorities. In April 2007, the prime minister asked to convert the government website (.chinhphu.vn) to a government information portal with three main features: government e-newspaper, government electronic administrative information network and government public service information portal. The Ministry of Home Affairs-operated website, .caicachhanhchinh.gov.vn, communicates with citizens and provides information related to the Ministry's key activities on state administrative reform.

vi) Public services supporting the market and the demands of enterprises

(a) Electronic certificate of origin (eCoSys) management system

Since 2006-2007, the Ministry of Trade has actively rolled out the establishment of the electronic certificate of origin (C/O) system (eCoSys) as one of the first electronic public services in the trade sector. According to the approved plan, eCoSys mainly focuses on the management of C/O data by C/O issuing organizations across the country. The C/O issuing organizations do not have to install particular software but use the software built by the Ministry of Trade based on web technology. As for C/O issued by the Offices of Export-Import Administration, the Offices can update data online on the eCoSys website at <http://ecosys.mot.gov.vn>

By the end of 2007, the Ministry collected information of around 1,000,000 C/O forms issued throughout the country. In stage two of eCoSys, electronic C/O was applicable for preferential forms issued by the Ministry of Industry and Trade including certificate of original forms A, D, E, S and AK (according to commercial agreements between Vietnam and ASIAN and other countries). Furthermore, enterprises must have computers connected to the internet and card readers connected to the Ministry's MOT-CA (Ministry of Trade Certification Authority) system (now changed to MOIT-CA). The module for enterprises is located at Vietnam E-Commerce Portal (ECVN).

The module for C/O issuing organizations is located at the official website of the Ministry of Trade at <http://ecosys.moit.gov.vn>.

In the eCoSys plan 2008, e-C/O software applications are developed, comprising particular modules to serve C/O issuing organizations and enterprises based on the standards UN/ISO 9735 of the United Nations Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT).

(b) Electronic taxation and customs

According to the plan for developing e-government in the financial sector up to 2010, five online public services will be offered as follows: electronic customs declaration, electronic taxation declaration, public property registration via the internet, budget code issuance via the internet and a forum to exchange ideas on policies with the finance minister.

Vietnam Customs has issued the format for e-customs declaration documents, which are the basis for connection and information exchange between the Customs Administration, enterprises and relevant parties. The format for the documents uses extensible markup language (XML) data transformation.

In the future, the General Department of Vietnam Customs (GDVC) will submit to the Ministry of Finance a request for approval on proclamation of standards for e-customs declaration documents on the basis of acceptance of the World Customs Organization's (WCO) data set. Vietnam Customs is also deploying e-customs declaration nationwide and extending it at a higher level through implementation of e-customs procedures. For both modes, enterprises take the initiative in e-customs declaration, which helps to lessen contact between Customs and enterprises, to reduce inconveniences. Also, this helps to enhance enterprises' awareness of legal compliance.

E-customs declaration and procedures: E-customs declaration is one of Customs' measures taken to promote the process of customs modernization. Enterprises can connect to the Customs' network via the internet and make customs declarations with the software set up at enterprises' head offices or via the customs declaration website. Enterprises input data of imports/exports declaration forms into the software set up at enterprises' head offices, then forward them to Customs via the internet. In such key municipal and provincial Customs departments such as Hanoi, Hai Phong, DongNai, BinhDuong, VungTau, DaNang, etc., the rate of e-customs

declaration has reached nearly 100%.

Customs is planning to extend forms and measures to develop in-advance e-customs, with a view to spread the supply of software throughout society for enterprises' benefits.

In the process of pilot implementation of e-customs procedures and phase one of e-customs clearance (01 January 2007 - 1 October 2007), 214 enterprises participated in e-customs with 26,087 electronic import/export declaration forms. The total of duties was VND2,272 billion and the total import and export turnover more than \$2.4 billion VND.

In phase two (from 01 October 2007 to 2008), there were 387 enterprises participating in e-customs, with 10,048 electronic import/export declaration forms, a total import and export turnover of more than \$1 billion VND, and duties of more than 989 billion VND.

For a shipment of goods subject to the "Green Channel", the average time for clearance is from 5 to 10 minutes; for those subject to the "Yellow Channel", from 20 to 30 minutes; and for those subject to the "Red Channel", it depends on the goods-checking time at Customs sub-departments. E-customs procedures have initially succeeded in the development of a modern, concentrated clearance model, including the following elements: concentrated data receipt, processing and declared information reply; concentrated documents inspection; actual goods inspection and supervision of imports and exports.

Many other public services supporting enterprises and citizens are operated by the State Bank, Customs Office, Taxation Office (Ministry of Finance), licensing (Ministry of Industry, Ministry of Transport) and issuing passports (Ministry of Home affairs and Ministry of Foreign affairs). Electronic services are also now playing very important roles in assisting these public services.

vii) Information and data privacy protection and Trustmark programs

In the context of ever-increasing e-commerce applications, the collection of consumers' personal information over the internet has become a common practice among enterprises. E-commerce transactions between enterprises and consumers (B2C), information & data compiling and processing, targeted advertising, and customer relation management (CRM), etc, all require a great deal of personal data, including private information. While

developed countries and many international organizations have put the issue of data privacy at the center of their policy agenda, information privacy and consumers' privacy rights are still a new concept in Vietnam. On the one hand, the current legal system lacks regulations on privacy protection; on the other hand, enterprises and consumers themselves are still unfamiliar with this concept. However, recent progress of information technology and wide penetration of the internet have made the effects of personal information leakage more and more visible. As a result, the privacy issue is now emerging to draw a wide range of public attention.

According to the Ministry of Industry and Trade's surveys throughout the years, enterprises are increasingly aware of and concerned with the issue of information security, since cyber crimes related to personal information theft, private images dissemination, spamming, etc, are becoming more and more common.

Table 1-5-3 Survey results of data privacy policy on e-commerce websites

Forms of website	With data privacy policy		Without data privacy policy	
	Quantity	%	Quantity	%
C2C	19	19%	83	81%
B2C	36	24%	117	76%
B2B	20	57%	15	43%
Total	75	26%	215	74%

Source: Personal data and data privacy protection in e-commerce, mot.gov.vn

Out of the 290 surveyed websites, by the end of year 2006, only 75 websites (accounting for 26% of the total number) had announced data privacy policy. Thus, there remained 74% of websites that lacked specific commitments to customers on the practice of data collection and usage. Further scrutiny of websites shows that those at higher functional levels also have greater interest in this issue. B2B portals – the most professional of e-commerce websites – boast the highest rate of websites having data privacy policy (57%), while B2C and C2C websites, though dominating in number and targeting individual consumers, have a much lower rate of privacy policy disclosure.

Joining the Asia Pacific Trustmark Alliance: 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 meet 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' TRUSTe).

(source [://www.vndaily.net/english/2004/modules.php?name=News&file=article&sid=5391](http://www.vndaily.net/english/2004/modules.php?name=News&file=article&sid=5391))

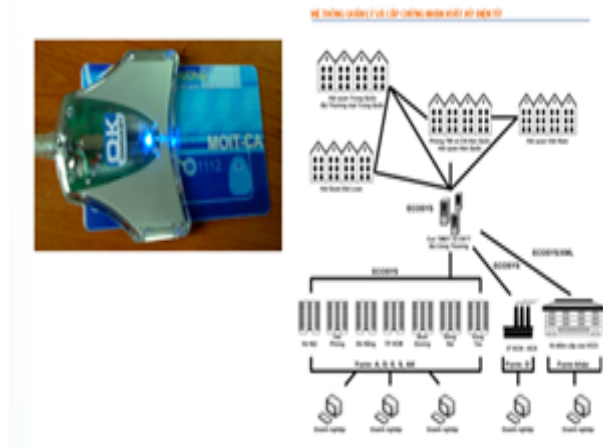
viii) Establishment of secure and safe e-commerce marketplaces

At the current time, through market demands for development, and through a desire to reduce different costs in service and production, many enterprises have been establishing safe and highly reliable e-commerce websites in Vietnam. Some examples of established security in trading and e-commerce are described as follows.

- Using CA (Certification Authority) in the System Management of electronic certificates of origin (eCoSys) for issuing eC/O

In parallel with the implementation of the electronic visa system for exported textile products (ELVIS) between Vietnam and the US, in 2006-2008 the Ministry of Trade (now Ministry of Industry and Trade) actively rolled out the establishment of the electronic C/O system (eCoSys) as one of the first electronic public services in the trade sector. C/O system (eCoSys) has been operated by the Vietnam E-Commerce and Information Technology Agency and the Ministry of Industry and Trade (VECITA-MOIT) with modern security mechanisms; i.e. using Certificate of Authority equipment for online G2B transactions between VECITA-MOIT(G) and enterprises (B).

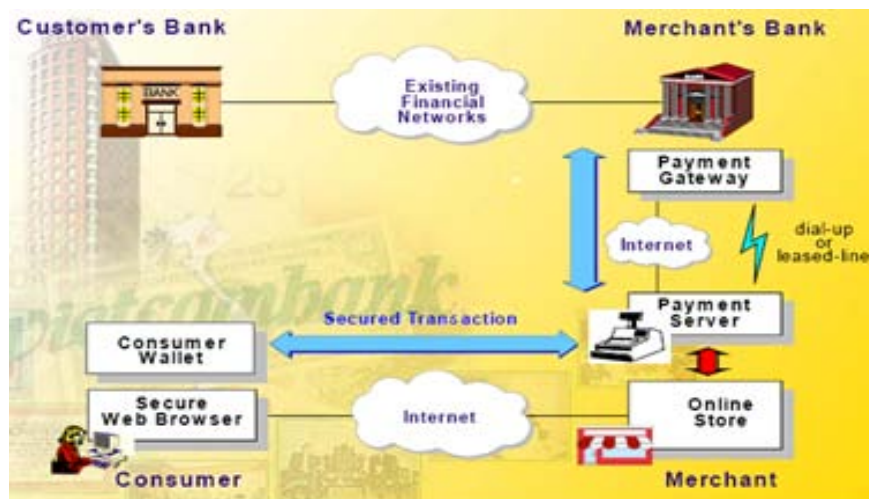
EC Security in Trading- issuing eC/O and CA



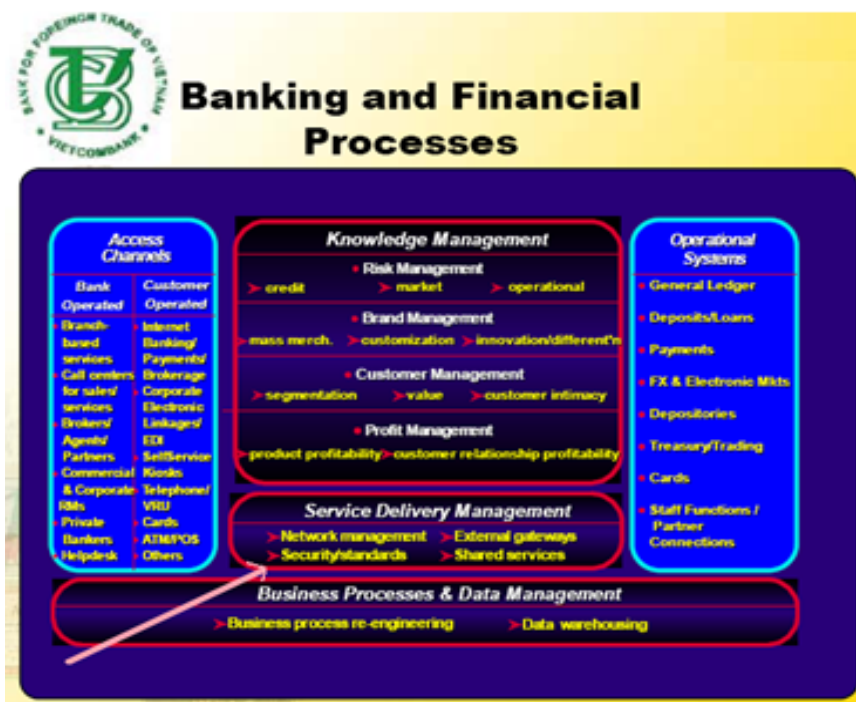
Picture 1-5-1 eCoSys system using CA equipment

- Secure and safe e-commerce in banking and transportation services

Since February 2007, the Bank for Foreign Trade of Vietnam (VCB) and Pacific Airlines JSC (now changed into Jet Star Pacific Airlines JSC) cooperated in selling tickets online by applying credit card payment with secure and safe information processing for online transactions



Picture 1-5-2 VietcomBank internet payments with secured transaction diagram



Picture 1-5-3 Banking and financial process with security standards in VietcomBank



Picture 1-5-4 Token card with 6-randomly generated numbers for secured e-transactions through TechComBank

E-commerce websites in Vietnam were mainly for publishing products and information services including secured internet banking services. B2C models and C2C transactions stemming from market demands were small and scattered due to the lack of protection. However, electronic payment has

experienced many changes due to new security techniques for on-line transactions, especially in the areas finance and banking, transport, logistics, production and service.

Moreover, increased linkages among card alliances, cooperation among 27 banks to develop the Smartlink paying network, and the success of four giant banks in Vietnam's National Financial Switching JSC (Banknetvn), have boosted the bank card market to develop and be more beneficial to customers. These two paying networks account for around 90% of the nationwide bank card market with high levels of security services. Common electronic transactions and payments are through ATM or POS, paying online through internet (e-commerce websites) and mobile phone services.

At present, there are real transactions carried out through these payment methods, but each has its own problems that need to be solved. ATM or POS was initially applied for paying bills, paying for service fees, buying prepaid cards, etc, but there still remain problems when it comes to connecting between partners or between POS systems that only accept international cards. These problems are urging the paying networks or card alliances to speed up the synchronization among member banks or other systems. Paying through SMS was hindered by the small scope of transactions and the need to memorize the code. Paying through the internet is very promising. Internet banking services began to show strength when paying for utilities became possible.



Picture 5.
Personal Digital Assistant (PDA) devices and remote applications for e-commerce are now in use at the Haiphong Port

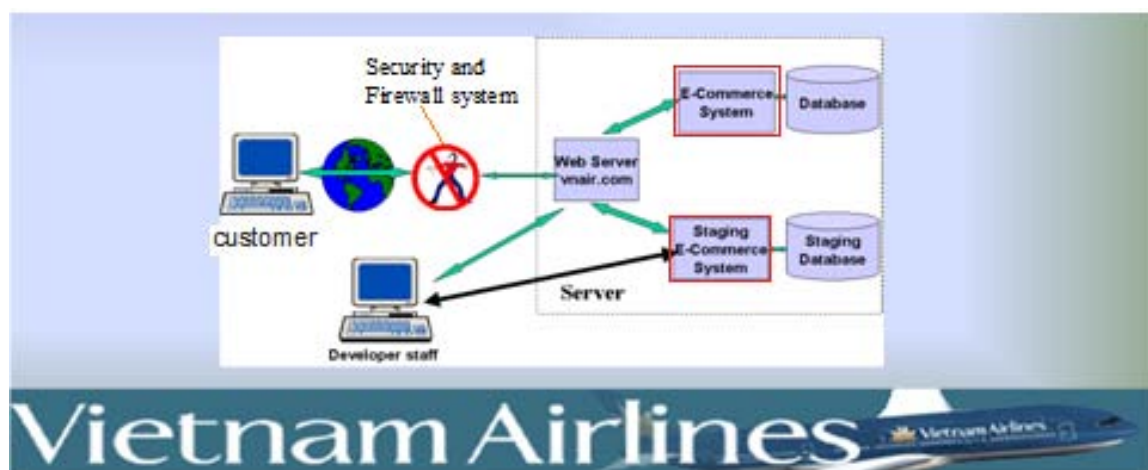
- E-commerce security applications in transportation and logistics: Since 1993 electronic Data Interchange (EDI) has been applied in the

Haiphong Port for container management, and multinational e-commerce services with messaging and security systems have been put into use.

Enforcement of legal standards for CA and digital signatures: In e-commerce and online transactions, many high-tech criminals are now involved in fraud. The Ministry of Information and Communication (MIC) issued national legal standards for e-commerce services applying to CA and digital signatures. ([.mic.gov.vn](http://mic.gov.vn))

Moreover, Vietnam Airlines has been operating a Management Information system for booking air tickets with secured information for many years with the cooperation of international airline companies and SITA (*).

Note (*) *SITA is a multinational information technology company specializing in providing IT and telecommunication services to the aviation industry. SITA was founded in February 1949 by 11 airlines, as a cooperative providing communications between airports and pioneering telecommunications. The company was the first to handle data traffic in real time via a packet switched network over common carrier leased lines.*



Picture 1-6-6 Vietnam Airlines security and firewall system for transferring information for e-commerce (source [.vebiz.com.vn](http://vebiz.com.vn))

Below, there is some reference information relating to hackers and viruses

that attacked e-commerce websites in 2008.

- There are threats from hacker attacks to change the content of e-commerce websites and online transactions. As for Vietnamese security companies, IT experts in 2007-2008 sent warnings of unsafe and unsecure vulnerabilities in software applications. The results of a survey showed that 13 of 26 security companies' websites (50%) had dangerous vulnerabilities. This implies that related software applications might be attacked by hackers, leading to loss of control.

- Viruses affecting PCs and e-commerce websites: according to the Ministry of Public Security, in 2008 hackers attacked 161 websites, and within that number, 109 websites were attacked by overseas hackers. Every month, dozens of websites (including e-commerce websites) are attacked by overseas hackers. For example, the domain name of the website of P.A Vietnam company was changed, the website of Techcombank was attacked, and there were other illegal attacks, including of the DoS (*) variety. The estimated loss was 3.000 billion VND (Source Security World 2009)

Note () DoS attack (denial-of-service attack) or DDoS (distributed denial-of-service attack) is an attempt to make a computer resource unavailable to its intended users. Although the means to carry out, motives for, and targets of a DoS attack may vary, it generally consists of the concerted efforts of a person or persons to prevent an internet site or service from functioning efficiently or at all, temporarily or indefinitely.*



- BKIS (Bachkhoa Secure Network Center) announced in 2008 that 33,137 new viruses were activated in Vietnam, and that 99.8% of these viruses came from overseas while 36 viruses came from domestic sources. The new virus that affected the most computers in Vietnam was the W32.SecretW.Worm (affected 420,000 PCs). In comparison with 2007, there were five times more new viruses that appeared in 2008. The number of PCs that contracted viruses in 2007 was about 33 million, which then increased up to 60 million PCs in 2008. Moreover, 79% of websites (including e-commerce websites) have no preparation for defending from hacker attacks.

(Source [://www.securityworld.com.vn/hn2009/Vietnamese/ThongCaoBaoChi](http://www.securityworld.com.vn/hn2009/Vietnamese/ThongCaoBaoChi))

(2) Legal systems related to e-commerce

i) The fundamental legal framework for e-commerce has been established

Although lagging behind real-life practice, 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, which were promulgated in 2007. In the first quarter, the government successively issued three important decrees, namely Decree 26/2007/ND-CP guiding the E-transaction Law on Digital Signature and C/A Services, Decree 27/2007/ND-CP on Electronic Transactions in Financial Activities, and Decree 35/2007/ND-CP on Electronic Transactions

in Banking Activities. Subsequently, at the beginning of the second quarter, the Government promulgated Decree 63/2007/ND-CP on Administrative Sanctions for Violations in the IT Area and Decree 64/2007/ND-CP on IT Application in State Administration.

Various legal texts in specialized application areas have been issued. For example, in the banking sector, there are the State Bank Governor's Decisions on Procedures for Designating, Managing and Using Digital Signatures and CA Services in the Banking Sector, as well as Procedures for Bank Cards Issuance, Payment, Usage, and Support Services. The Prime Minister has also promulgated Decision 20/2007/QD-TTg stipulating Payment of State Employees' Salary via Bank Accounts.

In the finance and customs area, the Ministry of Finance and General Department of Customs have promulgated Decisions on the E-Customs Pilot Project, E-Customs Procedures, Risk Management in the E-Customs Pilot Project, and Recognition of Value-Added Service Providers in Customs Activities. Also, to remove obstacles concerning the use of electronic invoices in e-ticket transactions, the Ministry of Finance has issued Decision 18/2007/QD-BTC on the printing, issuance, usage, and management of electronic air tickets. In the commerce area, there is Decision 018/2007/QD-BTM stipulating the issuance of electronic certificates of origin (eC/O).

The above legal texts, together with many other texts related to e-commerce and information technology promulgated in 2007, have contributed to fulfilling the legal system for e-commerce in Vietnam.

ii) Making e-commerce policies

In 2006-2008 the policy framework related to e-commerce was also rounded out with various national projects and programs, making the e-commerce legal framework in Vietnam more complete.

The following table shows legal texts important for IT and e-commerce.

Table 1-5-4. E-commerce and IT policies promulgated in the 2006-2008 period

Date	Name of legal texts
29/11/2005	E-Transaction Law was approved by the Vietnamese National Assembly

22/6/2006	IT Law was approved by the Vietnamese National Assembly
15/9/2005	Decision No. 222/2005/QĐ-TTg of the Prime Minister approving the Master Plan on E-Commerce Development in the 2006-2010 Period signed by the Vietnamese Prime Minister
6/12/2006	Directive No. 14/2006/CT-BTM on the implementation of Master Plan on E-Commerce Development in trade sector
07/2/2006	Decision No. 32/2006/QĐ-TTg of the Prime Minister approving the plan for telecommunication and internet development up to 2010
24/5/2006	Decision No. 112/2006/QĐ-TTg of the Prime Minister approving the scheme on the development of Vietnam's banking sector up to 2010 and orientations toward 2020
29/12/2006	Decision No. 291/2006/QĐ-TTg of the Prime Minister approving the scheme on non-cash payment in Vietnam in the 2006-2010 period and orientations toward 2020
12/4/2007	Decision No. 51/2007/QĐ-TTg of the Prime Minister approving the program for the development of Vietnam's software industry up to 2010
23/4/2007	Decision No. 55/2007/QĐ-TTg of the Prime Minister approving the list of priority industries and spearhead industries in the 2007-2010 period, with a vision to 2020 and a number of incentive policies for these industries
03/5/2007	Decision No. 56/2007/QĐ-TTg of the Prime Minister approving the program on the development of Vietnam's digital content industry up to 2010
28/5/2007	Decision No. 75/2007/QĐ-TTg of the Prime Minister approving the Master plan on the development of Vietnam's electronic industry up to 2010 with a vision to 2020
07/7/2007	Directive No. 07/CT-BBCVT of the Ministry of Post and Telematics on orientations for Vietnam's Strategy for the development of information technology and Communication in the 2011 – 2020 period
26/10/2007	Decision No. 05/2007/QĐ-BTTTT of the Ministry of Post and Telematics approving the plan for the development of Vietnam's information technology human resources up to 2020
8/03/2007	Decree on electronic banking operations No. 35/2007/NĐ-CP
10/4/2007	Decree No. 64/2007/ND-CP on information technology application in state agencies' operations

21/02/2008	Decision No. 04/2008/QĐ-NHNN of the State Bank for issuing, managing and using digital signatures and CA services in banking
09/04/2008	Decision No. 19/2008/QĐ-BTTTT of the Ministry of Information and Communication for applying IT standards in state agencies
09/04/2008	Decision No. 20/2008/QĐ-BTTTT of the Ministry of Information and Communication for issuing lists of IT standards for application in state agencies
22/05/2008	Guideline No 1594/BTTTT-UDCNTT of the Ministry of Information and Communication for making IT plans for application in state agencies during the period 2009-2010
26/05/2008	Circular No. 43/2008/TTLT-BTC-BTTTT of the Ministry of Information and Communication and the Ministry of Finance on guidelines for financial procedures applied in state agencies
13/06/2008	Decision No. 891/QĐ-BTTTT of the Ministry of Information and Communication on setting up a national CA center
08/07/2008	Directive No 05/2008/CT-BTTTT of the Ministry of Information and Communication for development of the IT industry.
17/09/2008	Directive 2967/BTTTT-Ttra of the Ministry of Information and Communication for preventing hacking of online games, and spam emails
15/10/2008	Decision No. 37/2008/QĐ-BCT of the Ministry of Industry and Trade approving statistical methods for e-commerce
29/10/2008	Decision No. 144/2008/QĐ-TTg of the Prime Minister approving a statistical survey programme
31/10/2008	Decision No. 40/2008/QĐ-BCT of the Ministry of Industry and Trade approving the issue, management, and use of digital signatures, and CA services in industrial and trading services
21/7/2008	Circular No. 09/2008/TT-BCT, decree on guidance for supplying information and signing contracts on e-commerce websites
30/12/2008	iii) Decision No. 56/2008/QĐ-BCT of MOIT approving national technical regulations on electronic data interchange for issuing certificates of origin

National standards for secure and safe information in e-commerce: issuing technical standards for the management of secure information processes is urgently needed for the development of e-commerce and online transactions, and to secure information processes in Vietnam. The Directorate for Standards and Quality (STAMEQ - Web-site: <http://www.tcvn.gov.vn/>) is the

national standards body of Vietnam and has been a member of the International Organization for Standardization (ISO) since 1977, with main functions to develop legal documents, policies, strategies, and development plans on standardization as well as to guide and supervise standardization, metrology and quality agencies of ministries, branches, and localities in technical methodology and professional skills. For developing and guiding the application of regional and international standards, STAMEQ has been making translations and guides related to many ISO standards in e-commerce areas. Currently, many e-commerce and IT applications in Vietnam are now using standards for secure information process for different information systems as follows.

- TCVN UN/ISO 9735 (Part 5: Security Rules for Batch Electronic Data Interchange (EDI); Part 6: Secure Authentication and Acknowledgement Message; Part 7: Security Rules for Batch EDI; Part 9: Security Key and Certificate Management Message)
- TCVN ISO/IEC 17799:2000, Information technology – Code of Practice for Information Security Management
- TCVN 6695-8:2004, Information technology
- ISO 27001.ISO/IEC 27001:2005 Security Techniques for Information Security Management Systems – requirements
- ISO/IEC 17799:2000 Code of Practice for Information Security Management.

MOIT is now running a pilot project for applying UN/ ISO 9735 to data content and security messaging in the eCoSys System, for connecting MOIT and the Vietnam Chamber of Commerce and Industry (VCCI) in 2009, and then other countries (China, Taiwan, and Korea) under commercial agreements in the period 2009-2010. In the eCoSys System, the standard UN/ISO 9735, with security parts, is to be applied.

(3) Efforts to build confidence in e-commerce

According to the results of the surveys conducted by MOIT, social awareness was evaluated by businesses as a prime obstacle to e-commerce development in Vietnam (2006-2009). Increasing confidence is the most

important thing for business and society in the implementation of a new business method – i.e. electronic commerce. Nowadays, e-commerce business and society, along with state agencies (ministries, government) and social organizations (such as associations), need to make various efforts to create positive changes in awareness and confidence related to e-commerce. Towards that end, many methods for raising social awareness through e-commerce training activities and events are described as follows:

- E-commerce training in schools and universities, such as the “Students with E-Commerce” program (*)
- Using mass media such as newspapers, the Voice of Vietnam Radio, Vietnam Television and digital/cable television for public support and education
- Implementing Trustmark systems: e-commerce activities have been continuing every year and have developed a strong reputation and increased popularity. Examples include the Trustmark program for e-commerce websites carried out by MOIT in cooperation with the Vietnam Informatics Association, or the “e-commerce events of the year” annual polls conducted by the media.
- Organizing e-commerce contests and awards such as the E-Commerce Gold Cup presented by Vietnam Informatics Association, the *Sao Hue Award for E-Commerce Solutions* by Vietnam Software Association or *BIT Cup* by PC World magazine (2007-2008)

Alternative dispute resolution (ADR) systems (**) are being set up to collect complaints from consumers, and to recommend/allow merchants’ websites to provide consumers with fair, timely, and affordable means to settle disputes and obtain redress. The Vietnam E-Commerce Association (VECOM) is now going to set up ADR mechanisms to support dispute resolution services. Through ADR services, VECOM requests that merchants’ websites provide easy-to-find and understandable notices on how consumers can successfully and meaningfully contact the merchant to solve problems related to a transaction. VECOM also exchanges complaint information with other Associations such as the Vietnam Chamber of Commerce and Industry (VCCI), the Vietnam Standard and Consumer Association (VINASTAS), and the Vietnam Information Security Association (VNISA).

Note () “Students with E-Commerce” Program: In 2007, the Students*

with E-Commerce Program was held for the first time, aimed at finding new e-commerce ideas from students. Starting at the end of May 2007 and closing in December 2007, the program gave universities, enterprises in the e-commerce sector and students opportunities to exchange ideas, and exploit and increase results in e-commerce study and research. The program was sponsored by the Ministry of Industry and Trade in cooperation with enterprises and capital funds. The program is going to be organized annually to increase social awareness on e-commerce as well as to encourage new e-commerce applications in business activities.

Note (**) Collecting complaints and mechanisms for dispute resolution services: Besides VECOM setting up ADR systems, other associations such as VCCI, VINASTAS, and VNISA are also cooperating to support the collection of complaints (including e-commerce complaints if any). These organizations are also cooperating to exchange various information with each other, including on procedures.



Picture 1-5-8: Associations with mechanisms for sharing information on complaints

From 2008, online contracting and other online transactions such as online payment or digital product trading will increase rapidly both in terms of volume and value. As a result, civil disputes related to online buying and selling will become more and more common. Also, disputes on intellectual property in cyber space such as domain names and

copyrights are predicted to become elevated, with increasing complexity. Furthermore, the number of disputes between Vietnam and other countries' citizens while conducting trade and business activities in 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 is therefore to enhance the capacity of e-commerce dispute settlement for relevant agencies and institutions (*Vietnam E-Commerce Report 2008*).

The Case of VCCI: in the B2B model of e-commerce, VCCI has been issuing electronic C/O forms for export enterprises. Through e-commerce applications, around 5,000 export enterprises are using the electronic C/O forms service through the website of VCCI. According to the VCCI legal department's statistical report, the number of enterprises that filed complaints in 2008 related to e-commerce services (electronic C/O forms) involving technical issues such as website access, software application, and typing mistakes in online declarations amounted to around 250 enterprises (the equivalent of 5%). .

VECOM - The Vietnam E-Commerce Association Establishment Decision was promulgated by the Ministry of Home Affairs on 25th June, 2007. VECOM held the first General Meeting (term 2007 – 2011) on 24th July, 2007 with the participation of many representatives from the Ministry of Home Affairs, the Ministry of Industry and Trade, the Ministry of Planning and Investment, other government offices and over 200 initial company members nationwide. VECOM is a non-governmental organization of companies, agencies and individuals trading by e-commerce tools or applying e-commerce for their production, consumption; and e-commerce service providers. VECOM develops on a non-profit and voluntary basis to collect, cooperate and protect members' rights to develop the e-commerce sector in Vietnam. VECOM has a nationwide scope of activities according to Vietnamese

law. Contact information: Vietnam E-Commerce Association (VECOM),
Address: 25 Ngo Quyen Str., Hanoi Email: office@vecom.vn

VCCI – The Vietnam Chamber of Commerce and Industry is a national organization that assembles and represents the business community, employers and business associations of all economic sectors in Vietnam. The purpose of VCCI is to protect and assist business enterprises, to contribute to the socio-economic development of the country and to promote economic, commercial and technological co-operation between Vietnam and the rest of the world on the basis of equality and mutual benefit. VCCI is an independent, non-governmental, non-profit organization having the status of a legal entity and operating with financial autonomy (<http://www.vcci.com.vn>).

VINASTAS -The Vietnam Standard and Consumer Association was also a member of the Drafting Committee for the Competition Bill of Vietnam. Besides consumer protection issues, VINASTAS is also in charge of ‘standards’ issues, so they have a close relation with businesses in the country, both state-owned and private sector, both manufacturing and services. The consumer is the voice of the organization, and it has carried some articles on competition law and policy from a consumer perspective, especially with support from the literature. VINASTAS’s contribution to the project will help to ensure that the development of the subject law and policy will contribute to improve the economic well-being of society as a whole with special emphasis on low- and middle-income consumers...

For more information please contact: *Tel.*
844.38520981/38527769-Email Vinastas@fpt.vn

VNISA - Vietnam Information Security Association (VNISA) is the first non-profit organization of Vietnam that deals with information security. VNISA promotes the development of professionalism in the information security industry, and encourages the professional development of VNISA’s members. VNISA’s members are organizations of the government, organizations of the Ministry of Defense, organizations of banking and finance, telecom companies,

businesses active in the fields of providing solutions, information security, consulting, education, and security experts.
Website : [://www.vnisa.org.vn/en](http://www.vnisa.org.vn/en)

(4) Need for international e-commerce and cooperation

The results of surveys conducted in the period 2007-2008 show that Vietnamese e-commerce has now entered a stage of vigorous development. Most areas related to e-commerce have undergone major changes. Especially, the e-commerce and ICT legal framework are now basically formed and will soon be complete. Internet infrastructure is now capable of supporting e-commerce activities in the big provinces and cities, the majority of consumers and enterprises are aware of the benefits of e-commerce, and e-payment has taken shape and has begun to spread throughout the country. Moreover, e-commerce has taken root in several business sectors, and e-commerce investment efficiency has become obvious.

Together with the above-mentioned e-commerce domestic developments, Vietnam also needs to focus on long-term international e-commerce cooperation in the following categories:

- Setting up international e-commerce cooperation in different economic areas for trade facilitation:

From 2006 to the present, Vietnam has gradually participated in multilateral fora on e-commerce such as those hosted through Asia Pacific Economic Cooperation (APEC), the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), United Nations Commission on International Trade Law (UNCITRAL), United Nations Conference on Trade and Development (UNCTAD), etc. Vietnam has also been collaborating bilaterally with countries and territories such as the United States of America, Japan, China, Taiwan, and Korea. Currently, Vietnam needs to further participate in cooperative international activities organized by multilateral organizations, especially by focusing on joining the activities of APEC, UNCITRAL, and the WTO in order to support and complete the e-commerce legal framework, as well as to effectively implement international commitments on e-commerce. Establishment and popularization of national electronic data interchange standards in harmony with international standards is to play an important role in developing the

e-commerce of our country. Therefore, Vietnam needs to take part in the actions of The United Nations Centre for Trade Facilitation and Electronic Business (UNCEFACT) and AFACT (Asia Pacific Trade Facilitation and Electronic Business) as well as Pacific Asia E-Commerce Alliance (PAA), and the e-Business Asia Committee (eAC). ...

Bilateral cooperation - with nations that are advanced in the field of e-commerce and have trade relationships that include large investments in Vietnam, such as the United States of America, Japan, Korea, etc, - needs to be further promoted to seek solutions supporting reductions in business transaction and administrative costs, and to improve competitive competence in the current context of retrogressive world trade. Besides this, Vietnam needs to promote the implementation of e-commerce commitments in free trade agreements (FTAs), firstly by deploying mutual recognition of certificates of origin with Korea in the FTA framework. In addition, we also need cooperation and support for enterprises and associations to take part in international e-commerce organizations such as Asia Pacific Trustmark Alliance (ATA) and Pacific Asia E-Commerce Alliance (PAA), etc, thereby gradually enhancing the prestige of Vietnamese enterprises in e-commerce.

Currently, many enterprises in different economic areas (such as steel production, automobile assembly, petrol and energy, wholesale and retail sale systems) aim to expand their business scope and lower costs for their production and services by applying modern technologies (including e-commerce) to effectively enter into international trade. Besides using e-commerce and information technology applications to help enterprises reduce input and production costs and enhance the competitiveness of their services and products in the world market, international e-commerce cooperation will bring enterprises many business opportunities through the exchange of trade information and sharing of business knowledge between different countries in a very short time. Setting up new international e-commerce cooperation in different economic areas between Vietnam and other countries is also one of the strategic goals for trade facilitation, which was approved by the Vietnamese Government for long-term commerce development and domestic economic reform.

- Receiving support from international organizations and from developed countries to assist the domestic business community and consumers in the implementation of e-commerce activities:

Nowadays, there are more than 300,000 small and medium-sized enterprises (SMEs) in Vietnam. However, currently, most are operating with limited manpower resources and with low investment (for example, companies with one employee/owner), and in fact they still can not afford big investments in e-commerce. According to estimates on e-commerce applications in recent years, participating in the e-marketplace leads to more required investment. Therefore, the e-commerce community needs support from international organizations as well as from developed countries to more effectively assist them in their implementation of e-commerce activities.

Moreover, e-commerce associations and other associations have responsibilities to ask for international support to help the e-commerce community and consumers in the implementation of 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 improving e-commerce implementation. There are many support programs for e-commerce that are now being used effectively in Vietnam, such as the program for raising awareness for the e-business community and consumer support by the U.S. Federal Trade Commission (FTC) through workshop activities, the project for modernization and development of Vietnam Customs, supported by around 60 million US\$ by the World Bank (WB), the project for modernization of the banking system, the project for administrative transparency in state Agencies (ETV) supported by the EU, etc.

- Setting up and implementing joint projects in e-commerce:

From 2006 to the present, Vietnam has gradually participated in multilateral fora on e-commerce such as APEC, UN/CEFACT, UNCITRAL, UNCTAD, etc., and has cooperated bilaterally with countries and territories such as the United States of America, Japan, China, Taiwan, and Korea. Currently, Vietnam needs to further participate in international cooperation organizations by establishing and implementing joint projects in e-commerce such as in the following areas:

- Enhancing and completing the e-commerce legal framework:

Thankfully, a series of legal texts guiding the implementation of the E-transaction Law and the Law on Information Technology were promulgated during the few past years. However, there are still some legal issues to be completed, relating to using digital signatures and CA services in

the banking, finance and customs areas, as well as import-export, and insurance procedures for domestic and cross border trading. Therefore, enhancing and completing the e-commerce legal framework are now very important, and will be assisted by further international cooperation.

- Establishment of a safe and highly reliable marketplace in ASEAN and East Asia:

Nowadays, commercial networks have been built in many industries that need e-commerce support. It is expected that cross-border business-to-business transactions will be further activated based on Economic Partnership Agreements (EPAs) and Free Trade Agreements (FTAs). However, there are business risks, such as improper protection of personal information, and divulgence of companies' information technology and know-how. Also, it has been pointed out that anxiety over the reliability of business counterparts is greater for e-commerce than for traditional business transactions. Therefore, to create a large and highly reliable consumption market in ASEAN and East Asia, it is necessary to mitigate the business risks that will be a hindrance to corporate activities and to build a marketplace where companies and consumers may perform commercial transactions without anxiety. Under the Second Working Group of this ERIA project (Establishment of secure and safe e-commerce marketplace), basic studies will be conducted 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 this project and hopes to cooperate with Japan and other countries to complete this project in the future.

- Setting up alternative dispute resolution (ADR) systems:

ADRs can provide consumers with fair, timely, and affordable means to settle disputes and obtain redress, and international e-commerce cooperation can play an important role in establishing these ADR systems. Merchants should provide an easy-to-find and understandable notice on how a consumer can successfully and meaningfully contact the merchant to solve problems related to a transaction. Merchants should also have effective "customer satisfaction systems", and should encourage consumers to take advantage of such internal mechanisms, while making a good faith effort to resolve any disputes relating to a transaction in a fair and equitable manner. Setting up an internal complaints mechanism with ADRs will help merchants to properly notify consumers that they are ready to submit disputes resulting from a

transaction to one or more specified ADR systems. Information about the ADR offered should be provided as a part of the notice on how consumers can contact the merchant to resolve problems related to a transaction, and access to an ADR system normally should be available only after a consumer has sought redress through a merchant's internal complaints mechanism.

- Implementing the Single Window project for customs service:

According to figures by the Department of Informatics and Statistics, until December 2007, there have been more than 500 enterprises participating in the e-customs system, with 36,135 export and import declarations (2007), and currently 30,000 enterprises participating in the e-customs system. The total export turnover of shipments processed via the e-customs system has reached over 3,4 billion US dollars, and total tax revenue has reached over 3.261 billion VND. Average processing time is 5-10 minutes for “Blue” lane clearances and 20-30 minutes for “Yellow” lane clearances. Compared to traditional customs procedures, e-customs processing time per shipment is about 4-8 hours less. However, towards the goal of a modern public service system such as Project Single Window for customs service, in the future, the sector needs to further reform its professional procedures as well as enhance the implementation of advanced information based on international cooperation and World Bank support.

- Enhancing e-payment and SMS banking services:

The Vietnamese market has more than 12 million payment cards, and several card alliances have formed, combining 90% of the market share of payment cards. These alliances are working together to unify the national market for card payment. Most transactions among and within the State Bank, commercial banks, and credit institutions can be done through internet banking and SMS banking services. Some electronic payment companies are now going to expand their service under joint projects for setting payment gateways, internet banking and SMS services using e-commerce websites.

- Capacity building for business associations and universities conducting e-commerce activities:

As an example, the Vietnam E-Commerce Association (VECOM) is now drafting and is going to submit a project to MUTRAP III (Multilateral Trade Assistance Project III), ASIE/2007/18844 “Capacity Building on Trade Policy for Vietnamese Business Associations and Universities”, supported by the EU. The main purposes and expected results of this project are described

as strengthening VECOM's capacity to be an efficient trade consultation partner for government and to provide efficient assistance to its members on trade issues; providing ideas on behalf of enterprises for building the Strategy for E-Commerce Development in the period of 2011-2020; setting up a regular communication channel and policy dialogue with leaders; setting up an updated and effective information channel about policies, laws and markets, and; supporting training issues on e-commerce.

- Sharing e-commerce information, data and knowledge:

Information, knowledge and experiences of technology and standards are critical to the development of e-commerce. The Master Plan on E-Commerce Development for the 2006-2010 period envisioned the development of e-commerce support technologies by encouraging know-how and technology transfer from overseas, and enforcing the formulation and popularization of common standards that are applicable to e-commerce, particularly electronic data interchange standards (such as EDI-Electronic Data Interchange and e-Business extensible markup language (XML)). Decree 57/2006/ND-CP (dated 29 June 2006 issued by the Prime Minister) stipulated the mission of state management agencies in formulating e-commerce technology innovation. Subsequently, Decree 127/2007/ND-CP dated 1 August 2007 detailed the implementation of a number of provisions in the Law on Technical Standards and designated the Ministry of Trade with the responsibility to formulate and promulgate national technical standards for services related to commerce and e-commerce activities. During 2003 and 2008, the Ministry of Science and Technology and several ministries and sectors conducted research to formulate a number of standards for EDI/eBXML applications. However, the promulgation and popularization of national standards for e-commerce are not yet commensurate with the development of large-scale B2B transactions. Since 2009, state agencies, particularly the Ministry of Industry and Trade and Ministry of Science and Technology need to accelerate the formulation, promulgation, and popularization of e-commerce national standards.

In general, e-commerce is a business model based on high technology, and so it requires that employees have both IT and e-commerce knowledge, and requires that enterprises frequently renew and update information and data according to market demands. Therefore, in order to effectively promote e-commerce applications, Vietnamese enterprises need to be involved in

international e-commerce cooperation.

- Organizing international information privacy protection activities in e-commerce:

Since 2006, under the APEC umbrella, Vietnam has endorsed the principles-based APEC Privacy Framework as an important tool in encouraging the development of appropriate information privacy protection and ensuring the free flow of information in the Asia Pacific region. Currently, Vietnam needs to be actively involved in the APEC data privacy protection program in e-commerce to help Vietnamese enterprises and consumers gradually approach international e-commerce. During the period of 2006-2008, MOIT and VECOM organized some workshops in Hanoi and Ho Chi Minh City for raising awareness for enterprises and consumers to understand the advantages of information privacy protection in e-commerce. With the cooperation of APEC, and through other international relations in e-commerce, Vietnam will more effectively implement encouragement and enforcement e-commerce websites to follow up on legal issues on information privacy protection. (In 2009, MOIT has been drafting a national law on consumer protection, which includes terms and conditions for information privacy protection).

APEC economies recognize the importance of protecting information privacy and maintaining information flows among economies in the Asia Pacific region and among their trading partners. As APEC Ministers acknowledged in endorsing the 1998 Blueprint for Action on Electronic Commerce, the potential of electronic commerce cannot be realized without government and business cooperation “to develop and implement technologies and policies, which build trust and confidence in safe, secure and reliable communication, information and delivery systems, and which address issues including privacy...”. The lack of consumer trust and confidence in the privacy and security of online transactions and information networks is one element that may prevent member economies from gaining all of the benefits of electronic commerce. APEC economies realize that a key part of efforts to improve consumer confidence and ensure the growth of electronic commerce must be cooperation to balance

and promote both effective information privacy protection and the free flow of information in the Asia Pacific region. (*Source APEC Privacy Framework*)

- Implementing Trustmark programs with the cooperation of ATA (Asia Pacific Trustmark Alliance):

Since 2008, Vietnam officially became the ninth member of the Asia Pacific Trustmark Alliance (ATA). The accession to the alliance has been assisting e-commerce consumers in recognizing trusted websites that protect personal data while offering secure and safe online transactions. Participants of TrustVn in Vietnam are e-commerce websites chosen by the program and concentrating on B2C (business to customer) transactions. The total number of B2C websites participating in TrustVn was 176 in 2007. Aligning with the APEC Privacy Principles, many websites in Vietnam are complying step-by-step with the ATA Common Criteria, which potentially paves the way for participating Trustmark service providers to function as “accountability targets” or “APEC privacy accreditation service providers” within the ambit of the APEC Privacy Framework. This enables participating service providers to tap into the rising demand for privacy assurance services, creates a potential new revenue stream for service providers and increases the relevancy of the Alliance and its members in the e-marketplace. ATA activities adapt and interpret two international guidelines in the area of consumer e-commerce and privacy protection – the GBDe Trustmark Guidelines (2001) and the APEC Privacy Framework (2004). In the practical context of a modern-day Trustmark operation, the six domains of the ATA are as follows: disclosure of information; practices; security; privacy; alternate dispute resolution (ADR); and monitoring.

To meet the practical demands of society, since 2005 the E-Commerce Department, Ministry of Trade (which is now the Vietnam E-Commerce and Information Technology Agency, Ministry of Industry and Trade) has annually carried out the TrustVn Program in cooperation with the Vietnam Informatics Association.

TrustVn Program’s objectives:

- 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 Trustmark to consumers and companies so that they are confident in shopping online and conducting online transactions;
- Making recommendations on the criteria of for trusted websites that online merchants should adopt to protect consumers' interests;
- E-commerce websites meeting all the program's criteria can use the logo for their advertisement and promotion.

For example, some TrustVN criteria:

- All information required to be disclosed in the e-commerce website by the merchant shall be clear and accurate. Merchants shall not make any representation or omission or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair to consumers.
- 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 can be substantiated. Merchants shall provide enough information about the goods or services available online so that consumers can make an informed choice about whether to engage in a transaction online.
- For security information that is transferred from a consumer to a merchant, or between merchants, merchants shall take reasonable steps ensure the security of confidential commercial and personal information. These security efforts shall be consistent with best industry practices and shall be appropriate for the type of information collected, maintained or transferred to third parties....

- E-commerce training for enterprises and consumers (in management and technical areas):

Currently, most of Vietnam's enterprises are small and medium-sized, and can not afford to invest in applying e-commerce. Therefore, training in e-commerce for enterprises and consumers (in management and technical

areas) are now very important to help SMEs continuously and actively participate in the B2B and B2C e-marketplaces. Furthermore, international cooperation is required for effective participation in the e-marketplace. According to the results of current surveys on e-commerce applications in the year 2008 and in recent years, participating in the e-marketplace yields great benefits with training and awareness raising, putting investment into both manpower knowledge and the upgrading of e-commerce infrastructure. However, because SMEs are lacking budgets, in 2008, there were still only 12% of enterprises partaking in the e-marketplace (compared with 10% by 2007). Therefore, training in e-commerce for enterprises and consumers will help SMEs to take great advantage of e-commerce in marketing, customer acquisition, and business transactions.

Besides solutions such as sending employees to participate in overseas e-commerce short-term training programs or inviting lecturers to train at schools or universities, one of the suitable ways to increase professional human resources is to associate and cooperate with international training and education organizations to develop human resources for e-commerce in Vietnam.

In conclusion, setting up international e-commerce cooperation between Vietnam and overseas organizations is also one of the most important strategic goals for trade facilitation approved and supported by the Vietnamese Government to develop the country's economy in the future.

References:

- 1) Vietnam E-Commerce Report 2006, 2007, 2008
- 2) [.moit.gov.vn](http://moit.gov.vn)
- 3) [://www.mic.gov.vn](http://www.mic.gov.vn)
- 4) [://www.most.gov.vn](http://www.most.gov.vn)
- 5) [.vecom.vn](http://vecom.vn)
- 6) [://www.securityworld.com.vn](http://www.securityworld.com.vn)

1.6. People's Republic of China

(1) Introduction

The purpose of this chapter is to report on the current status and recent developments in e-commerce in The People's Republic of China ("China"), focusing on the following issues and aspects:

- statistics of recent developments

- laws and regulations
- organizations
- Trustmarks
- dispute resolution

This report largely owes its content to the interviews with the government sections and other organizations listed below that are now taking leadership in the recent development of China's e-commerce policies and regulations. We also widely relied on the information available on the websites of such organizations, and legal databases that are publicly available.

- Ministry of Commerce, People's Republic of China (hereinafter referred to as the "MOC")

中华人民共和国商务部

[://www.mofcom.gov.cn/](http://www.mofcom.gov.cn/)

- China International Electronic Commerce Center (hereinafter referred to as "CIECC")

中国国际电子商务中心

[://www.ec.com.cn/](http://www.ec.com.cn/)

- China National Credit Information Service, Inc. (hereinafter referred to as "Sinocredito")

北京国泰企业征信有限公司

[://www.sinocredit.com.cn/](http://www.sinocredit.com.cn/)

- China Consumer's Association (hereinafter referred to as the "CCA")

中国消费者协会

[://www.cca.org.cn/english/index.jsp](http://www.cca.org.cn/english/index.jsp)

[://www.cca.org.cn/](http://www.cca.org.cn/)

- EC Trust Assessment Center, China Electric Commerce Association (hereinafter referred to as the "CECA") (Beijing EC Trust Business Holding Co., Ltd)

中国电子商务协会电子商务诚信评价中心

(北京诚通在线商业管理有限公司)

[://www.ectrustprc.org.cn/](http://www.ectrustprc.org.cn/)

Despite the kind cooperation provided by the above government sections and organizations, this report was only able to carve out a limited part of China's e-commerce activities. It has possibly missed other key players and activities. We strongly hope that more comprehensive and integrated research can be conducted by Chinese participants for further analysis and

cooperation in the next stage.

(2) Statistics

A rapid increase in the use of internet and e-commerce is obvious in the following statistics kindly provided by the Department of Informatization, MOC of China⁷. They clearly show the tendency of rapid and strong growth of the e-commerce market in China, and that China could be one of the most promising e-commerce markets in the world.

In the meantime, the data indicates that it is an urgent matter to set a standard norm for e-commerce in China, whatever form it would be, to regulate and promote the developing e-commerce market in China.

i) Internet user population

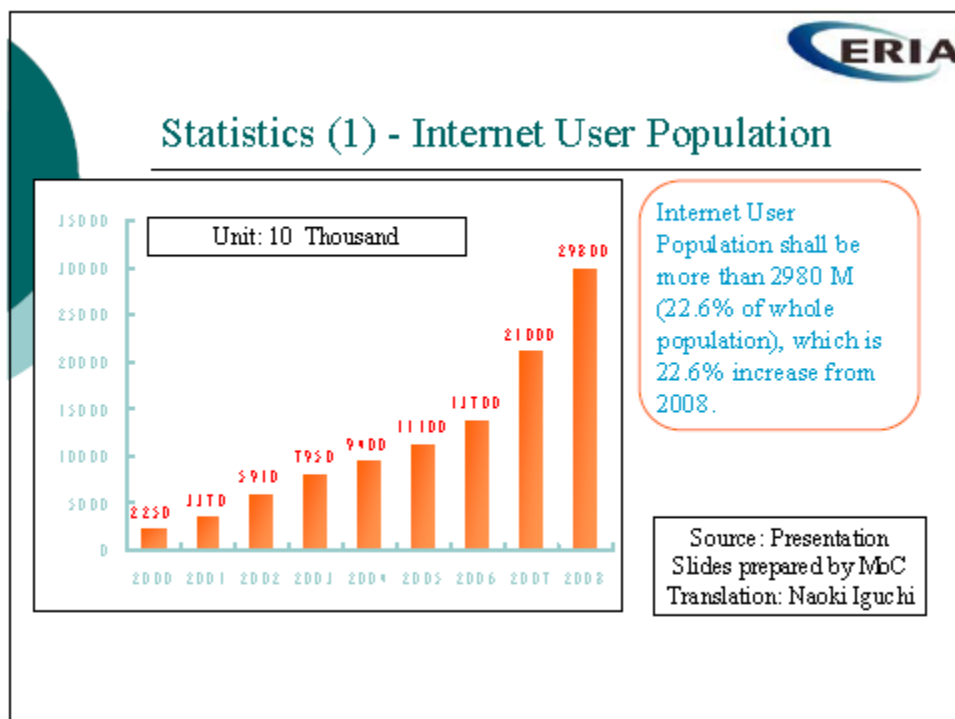


Fig.1-6-1 Statistics - internet user population

⁷ See Attachment I.

ii) End-users' facilities

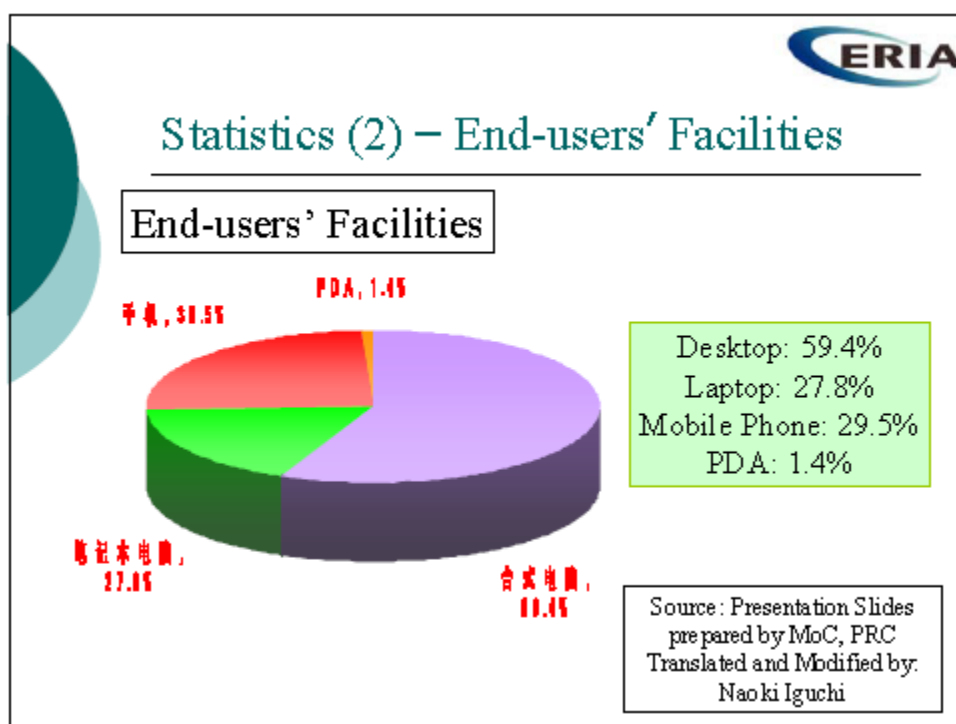


Fig.1-6-2 Statistics – end-users' facilities

iii) Number of websites

Basically, websites should be registered at the relevant local office of the Chinese Government, and a registration system is provided by relevant laws regulating internet services. Information services via the internet are classified into two categories according to the nature of these services, by the "Regulation on Internet Information Service (互联网信息服务管理办法)".⁸ Article 3 of the Regulation on Internet Information Service provides the following two categories: "commercial (经营性互联网信息服务)", and "non-commercial (非经营性互联网信息服务)". Commercial information services are defined as fee-paying services and non-commercial services refer to free services. For commercial services, an approval for the Internet Content Provider (ICP) is requested, while non-commercial use only requires registration and/or filing. In any way, the number of websites in China can be counted according to approval, registration and/or filing records at

⁸ See Chapter II.B.

governmental sections.

As shown in the charts below, the number of websites dramatically increased in 2007 and 2008, with the numbers almost reaching three million sites.

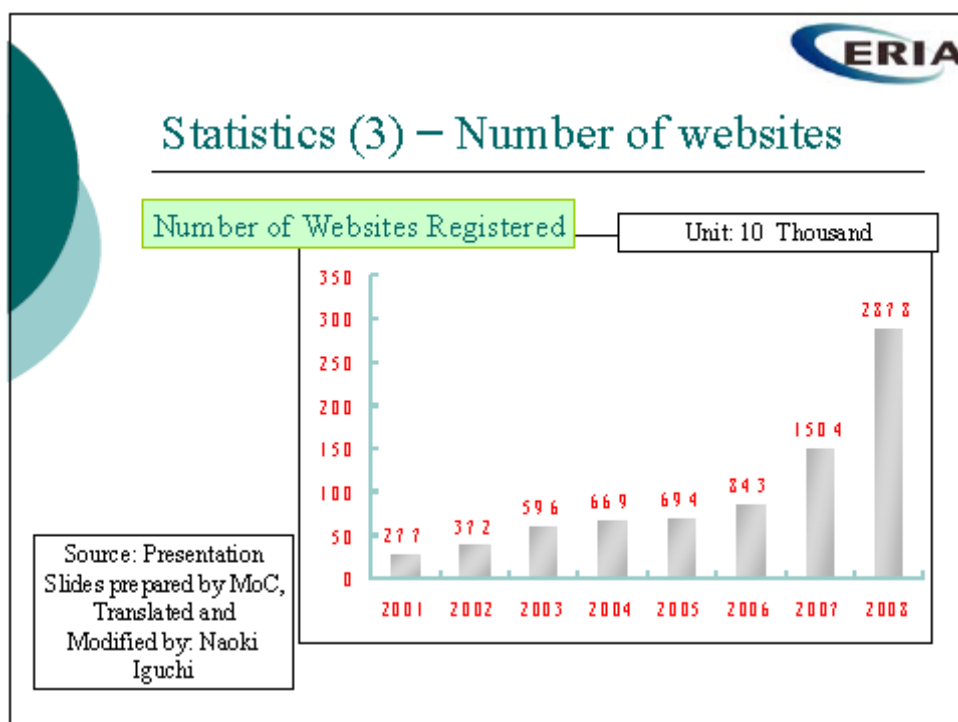


Fig1-6-3 Statistics – number of websites

iv) Sales and purchases via internet

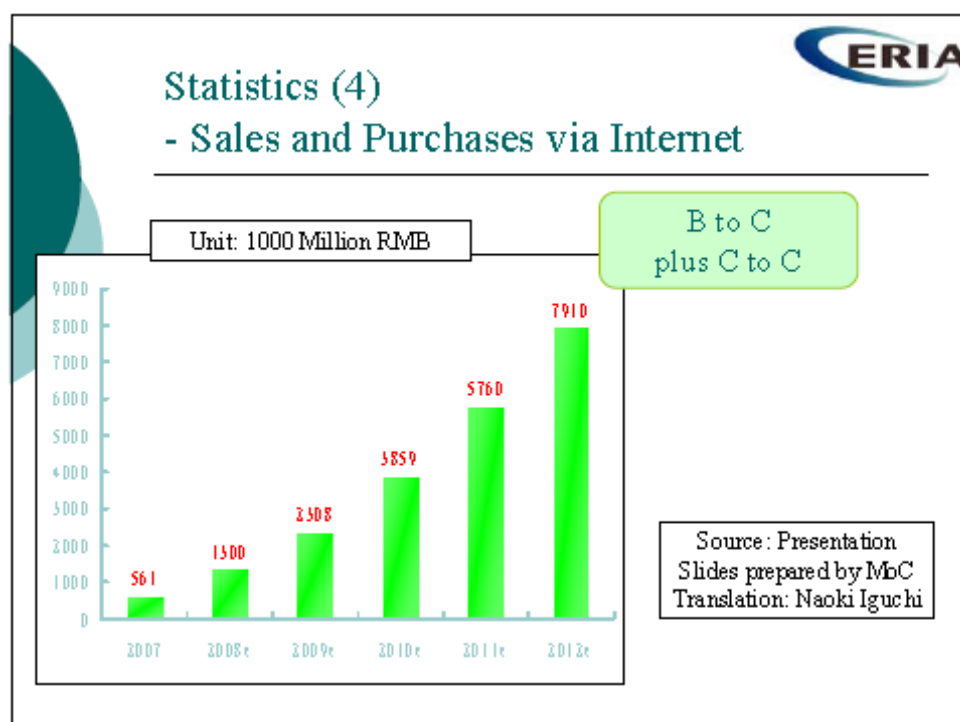


Fig1-6-4 Statistics – sales and purchase via internet

v) Purpose of using e-commerce

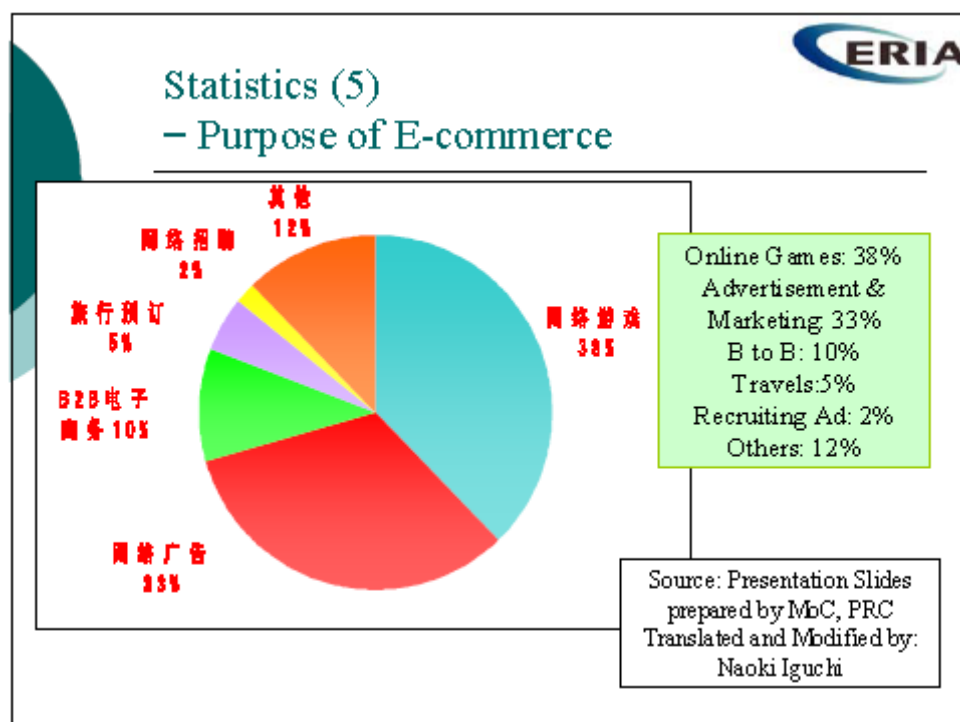


Fig1-6-5 Statistics – purpose of e-commerce

(3) Laws & regulations

In recent decades, Chinese central and regional governments have been enacting voluminous laws and regulations with tremendous speed in all legal areas. The same trend can apply to that of e-commerce. For understanding the Chinese legal system, it should be noted that although there are hierarchies of laws, orders and regulations as seen in other civil law counties (i.e., Germany, Japan, South Korea and Thailand), government circulations, opinions, and even particular replies to specific cases also work as practical norms in particular fields. In other words, governmental circulations, opinions and opinions are treated as legal source in practice in China. This is also applied to the field of e-commerce, so that one of the most important regulations to be applied to commercial activities (i.e., "Guiding Opinions of MOC on Online Trading (for Interim Implementation)", 2007) is neither an "Act" nor "orders" but rather "opinions" of the relevant government section.

For the purpose of structuring the system regulating e-commerce, Chinese laws and regulations may be grouped into three categories, relating to:

- A. E-commerce, which directly regulates commercial activities via the internet;
- B. Internet, which generally regulates internet information services and the opening of websites in China; and
- C. Consumer protection, which generally regulates business activities in business to consumer (B2C) contexts and also provides support to customers in their dispute resolution activities.

i) E-commerce

The most fundamental laws and regulations are the following four:

- Act on Electronic Signature, 2004/2005 (中华人民共和国电子签名法, 2004/2005)
- Opinions of the General Office of the State Council on Accelerating the Development of Electronic Commerce, 2005 (hereinafter referred to as the "Acceleration Opinions 2005") (国务院办公厅关于加快电子商务发展的若干意见, 2005)
- Opinions of the MOC on Enhancing and Regulating the Development of Electronic Commerce, 2006 (hereinafter referred to as the "Regulation Opinions 2007") (商务部关于促进电子商务规范发展的意见, 2006⁹)
- Guiding Opinions of the MOC on Online Trading (for Interim Implementation), 2007 (hereinafter referred to as the "Guiding Opinions 2007") (商务部关于网上交易的指导意见(暂行))

Among the listed laws and regulations above, the Guiding Opinions could be seen as the first and most comprehensive, integrated norm for commercial activities via e-commerce.

While e-commerce in China experienced rapid increases in volume and variety of transactions, there have been some risks and problems due to lack of integrated policies, laws and regulations. Those problems still exist even after the enactment and publication of the (i) Acceleration Opinions 2005 and the (ii) Regulation Opinions 2007. Accordingly, MOC determined to prepare the Guiding Opinions 2007 for the purpose of educating e-commerce users and businesses, establishing a safe online payment system, protecting privacy and trade secrets, and reducing the gap between users, businesses, and regions.

⁹ See Attachment II.

On the other hand, since integrated e-commerce regulations also relate to traditional regulations under the Civil Code and Commerce Code, preparing mandatory rules takes a lot of time and work for coordination of new rules with the existing and traditional rules. Furthermore, e-commerce regulations need more flexibility than those in other areas due to the nature of computer and internet technologies, and overly solid regulation might be an obstacle for lively developments in e-commerce. Accordingly, MOC found that it would be too early to enact an integrated and mandatory legal system for e-commerce. Instead, MOC decided to prepare a guideline that could be flexible, while leading norms for the developments of e-commerce in China.

The Guiding Opinions project started in June 2005, and from March 2006 to September, MOC heard various opinions and comments from other government sections, experts and business people, to reflect these in the drafting of the Guiding Opinions. From May to June 2006, MOC disclosed the draft and accepted public comments, and in December 2007, MOC had a discussion session with the experts to hear their opinions and comments.

An outline of the Guiding Opinions is as follows:

- Necessary Identification of the Parties to the E-commerce
- Necessary Explanation by Service Providers to Users
- Basic Principles for E-Commerce
- Guidance to Participants to the E-commerce
- Promotion and Policy for Sound Developments of E-Commerce

Among others, "3. Basic Principles for E-commerce" provides basic and sometimes concrete norms for e-commerce activities, which include:

(a) For All Parties to Online Transactions:¹⁰

The Guiding Opinions state that online transactions may make it difficult to know several aspects of the transactions, such as: identity, credibility, and performance capability of the parties. The Guiding Opinions instruct the users of online transactions to prepare for the risks by themselves.

¹⁰ In the body sentences of the Guiding Opinions, the word "Online Transaction (网上交易)" is used instead of "E-commerce". No reason is stated in the Guiding Opinions, and MOC does not see any important difference between the terms "Online Transaction" and "E-commerce (电子商务)". According to the relevant section of MOC, "e-commerce" is more popularly used in office and non-office documents recently.

Furthermore, the Guiding Opinions give alert to some issues that are treated differently from traditional transactions. Such issues are: signing, formation, and cancellation of contracts. The Guiding Opinions also raise the issue of payment, jurisdiction, governing laws, advertisements, protection of intellectual property, and recording of transactions.

(b) For Service Providers (i.e., Sellers) of Online Transactions:

The Guiding Opinions list important factors that should be incorporated into the charter of service providers' e-commerce policies. Those factors are: registration, rules for platforms, data disclosure, privacy and trade secrets protection, consumer protection, review of advertisements, dispute resolution, and anti-junk mail policy. Among others things, the Guiding Opinions emphasized the importance of rules for disclosure of data, consumer protection policy, maintenance of transaction records as well as total system security.

Furthermore, there are some important circulations that are practically treated as norms for e-commerce, such as:

- "Circulation Regarding the Plan No. 15 for the Development of E-commerce", National Development and Reform Committee, and Informatization Team of the General Office of the State Council (国家发展改革委、国务院信息办关于印发电子商务发展“十一五”规划的通知)
- Circulation Regarding the Enforcement of Opinions of the General Office of the State Council on Accelerating the Development of Electronic Commerce, 2005, MOC(商务部关于贯彻落实《国务院办公厅关于加快电子商务发展的若干意见》的通知)
- Reply of the State Administration for Industry and Commerce Regarding the Registration of Electronic Commerce Websites(国家工商行政管理总局关于电子商务网站登记问题的答复)

ii) Internet

Basic laws and regulations generally applied to internet activities (i.e., advertisement) are the following:

- Act on Advertisement(中华人民共和国广告法)
- Regulations on Control of Advertisement(广告管理条例)
- Detailed Implementing Rules for the Regulation on Advertising(广告管理条例施行细则)

- Interim Provisions on the Administration of Internet Publication(互联网出版管理暂行规定)
- Act on Internet Information Service(互联网信息服务管理办法)

iii) Consumer Protection

Important laws and regulations that give protection and/or assistance to consumers, including via e-commerce, are the following:

- Act on Product Quality(中华人民共和国产品质量法)
- Act on Protection of Consumer Rights and Interests(中华人民共和国消费者权益保护法)
- Handling Rules for Claims and Complaints(中国消费者协会受理消费者投诉规定)

(4) Organizations

i) Government

The structure of the Chinese central government is not simple, as is often the case in other countries. Furthermore, examining e-commerce amplifies the perception of the government's complicated structure due to the mixed nature of e-commerce that bridges "technology" and "commercial activities".

Reflecting this nature of e-commerce, two governmental divisions, among others, take leadership in the regulation of e-commerce. One is MOC (中华人民共和国商务部) and the other is the Ministry of Industry and Information (中华人民共和国工业和信息化部; hereinafter referred to as "MIT"). MOC mainly focuses on online commercial activities, while MIT watches internet activities generally and controls businesses directly related to the internet, i.e. internet service providers.

ii) Government's Affiliate Organizations

Most of the ministries, departments and sections of the Chinese Government have affiliate organizations with various legal structures. Some are associations and others are limited liability companies. The purpose of such organizations and companies varies widely, but usually their operations and businesses are closely related to the government's specific purposes, i.e., enhancing e-commerce, educating businesses and people, providing classified information with respect to new cases, laws and regulations, giving credible information on the businesses and companies operating in

e-commerce, etc.

In the field of e-commerce, since there are two government sections (MOC and MIT) that take leadership in providing the fundamental basis for e-commerce, we have found two major non-governmental organizations that have important roles in e-commerce in China.

(a) China International Electronic Commerce Center (CIECC)¹¹

CIECC is one of MOC's major affiliate organizations, which takes a form of a limited liability company. Although the amount of capital or other forms of contribution by MOC is not disclosed via its website, CIECC by itself announces that it is one of MOC's affiliate companies and sees that its major role is to support MOC's policy for promoting and developing e-commerce, whether domestically or internationally.

According to its website and leaflet, CIECC's activities, with respect to e-commerce, stretch into the following operations:

- Creating and maintaining websites for legal, regulatory, economic, statistical and regulatory information and alerts to the public (domestic and international)
- Accepting public comments on e-commerce
- Providing a "platform" for business-to-business (B2B) e-commerce (domestic and international)
- Providing hardware and software services
- Establishing subsidiaries to provide businesses credibility information via the internet (see V.B "Sinocredito")
- Providing a portal service for claims/complaints against businesses (including but not limited to those against e-commerce businesses)¹²

To date, it does not seem that CIECC focuses on providing supporting services for dispute resolution, although one of its websites works as a portal for ordinary customers to report claims/complaints against businesses (including but not limited to those against e-commerce businesses).¹³

¹¹ <http://www.ec.com.cn/>

¹² <http://antifraud.12312.gov.cn/usercommunion/intro.jsp> (中国反商业欺诈网"投诉举报"栏)

¹³ According to the interview with CIECC, CIECC may report to the relevant governmental sections if it receives a customer's report of someone's illegal activities. However, it does not have a systematic database system to record and analyze the claims.

(b) China Electronic Commerce Association (CECA)

CECA is an affiliate organization of MIT. According to the interviews of EC Trust, CECA's mission stretches to various activities and CECA mostly assigns its activities to third parties such as EC Trust (see V.C.). Furthermore, we could not find a website of CECA and there was no website link to CECA on MIT's website.

CECA seems to be closely related to MIT and it supports enforcing MIT's policy in the field of e-commerce.

(5) Trustmarks

i) Laws and regulations

To date, we could not find any laws and regulations which are particularly applied to "Trustmarks" and Trustmark-issuing organizations. There are, however, some Trustmarks issued by commercial companies that have close relationships with governmental sections and their affiliate organizations.

SINOCREDITO http://www.sinocredit.com.cn/	EC Trust Assessment Center http://www.ectrustprc.org.cn/
CIECC assigns to China National Credit Information Service, Inc. (SINOCREDIT).	CECA assigns to Beijing EC Trust Business Holding Co., Ltd., a private company.



Fig1-6-6 Trustmarks in China

ii) Examples (I)- "Sinocredito"

Sinocredito is an affiliate company of CIECC (and could be said to be an affiliate company of MOC).

Sinocredito prepared a portal website for credibility information of private business bodies. The portal site is named as the "China Business Credibility Evaluation Platform(中国企业信用认证平台)."

<http://www.sinocredit.net/view/ch/main.html>



Fig1-6-7 China Business Credibility Evaluation Platform

Sinocredito issues "e-Xin ("Credit" in Chinese)" marks to business (including but not limited to e-commerce businesses). e-Xin marks are given with A to AAA grades, which indicate the quality and level of credibility of businesses. According to Sinocredito's website, it has already issued more than three hundred (300) e-Xin marks, and the companies that have been issued these marks are listed on its website. More detailed information is also available on Sinocredito's website, where basic business information can be found (business' name, registered venue, registered capital, and evaluation chart).

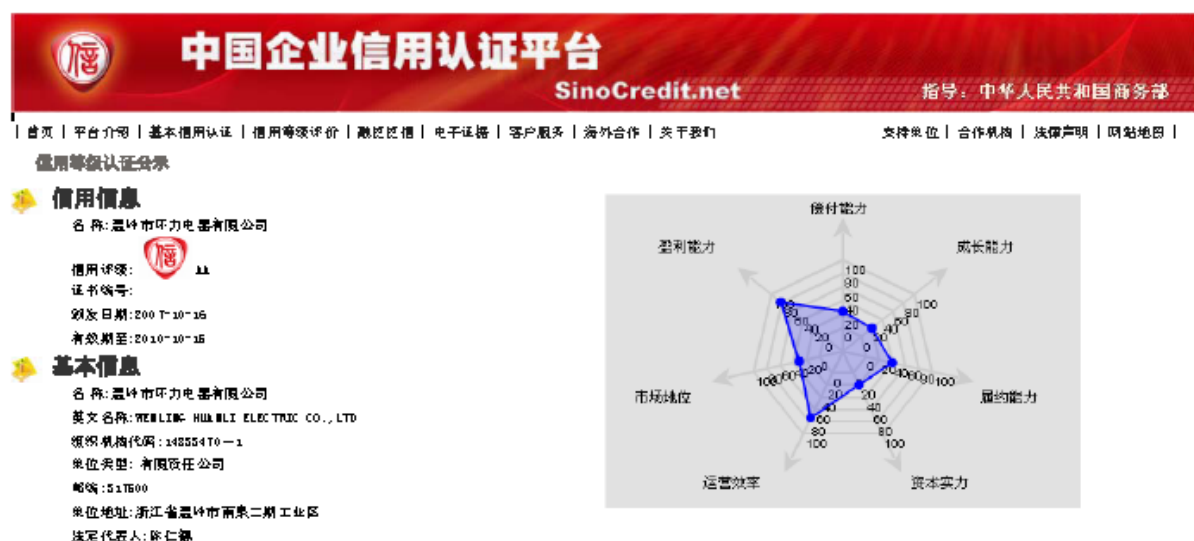


Fig1-6-8 Sinocredito's website

Some of the characteristics of Sinocredito's business database are that: (i) candidates are not limited to e-commerce businesses; and (ii) evaluation items are not limited to e-commerce-specific issues. In other words, its evaluation shows the business' (a) payment ability(偿付能力); (b) growth capability(成长能力); (c) performance capability(履约能力); (d) effective capital(资本实力)(e) management efficiency(运营效率); (f) market share(市场地位)and; (g) profitability(盈利能力). Considering these issues that Sinocredito really focuses on, Sinocredito goes far beyond a credibility evaluation of just e-commerce business. Furthermore, although information displayed on Sinocredito's websites should be very helpful for B2B businesses, it can not be said that the purpose of Sinocredito's evaluation platform is to give information to the customers of e-commerce, especially of B2C e-commerce.

iii) Examples (II) - "EC Trust"¹⁴

EC Trust is a commercial limited liability company that provides software assistance and supporting services to ordinary customers. According to the interview, it was established by ordinary investors, so that EC Trust is a normal private company that does not have a special relationship with governmental sections.

EC Trust takes CECA's work assignment of providing an e-commerce business credibility information platform, and accordingly it uses the name of "China E-Commerce Credibility Evaluation Center."

The most unique aspect of the EC Trust Trustmark system is that it only targets e-commerce businesses. It only accepts applications from business that have e-commerce activities via websites.

EC Trust issues two types of Trustmarks: blue marks for the business that passed EC Trust's ordinary review, and red marks for the businesses that are clearly business leaders in a particular field. Approximately one hundred (100) marks have been issued in total, including thirty (30) red marks.

¹⁴ <http://www.ectrustprc.org.cn/IntroductionCenter.htm>

Sample of EC Trust Red Mark



Sample of EC Trust Blue Mark



Fig1-6-9 Sample of EC Trust Mark

Application reviews usually take a few days (five business days) to evaluate several important issues in accordance with the "Basic Standard for E-commerce Business Evaluation (企业电子商务诚信基础标准)". Particular information is converted into scores for simple evaluation and comparison. While the complete set of information is not disclosed and not published, total scores, particular scores and an evaluation chart is recorded in EC Trust's intranet database. Some information that is collected post-evaluation, i.e., number of consumers' claims/complaints, is automatically converted into scores to revise the existing evaluation.

EC Trust's Basic Standard for E-commerce Business Evaluation is also disclosed through its website and leaflet. It includes issues such as:

- Credibility of identity information;
- Legality of the business;
- Protection of privacy/personal information of customers;
- Recordability of transactions;
- Sufficiency of explanations and descriptions of goods and services; and
- Customer support information.

EC Trust's Basic Standard for E-commerce Business Evaluation generally covers most of the important issues including protection of privacy/personal information of customers, although there is no statutory law and/or regulations for protection of privacy/personal information. In such a sense, EC Trust's Standards are well-advanced within the state of e-commerce of China, and if these standards are strictly applied, they could comprise a model list and practices for the other Trustmark issuing organizations or companies in China.

EC Trust also provides the names of the companies that have been issued blue or red Trustmarks with URLs and some particular scores. Although the

range of scores disclosed publicly is less than that which EC Trust keeps in its intra-network, those scores should nonetheless be helpful for e-commerce users. EC Trust said that it planned to prepare a "black list" of e-commerce businesses that provide poor or fraudulent services to customers, but it has not yet published this list on its website.



Fig1-6-9 Sample of companies that have been issued Trustmarks

As to dispute resolution support, EC Trust does not have a specific system to support customers in e-commerce disputes. EC Trust accepts customers' claims and complaints against e-commerce businesses, and, according to EC Trust, such claims and complaints are fairly and transparently reflected in the evaluation scores. EC Trust further notifies the e-business that is issued the blue/red marks about the claims and complaints on a no name basis (EC Trust said that it considered the privacy of customers). But, according to EC Trust, it receives few claims and complaints against the e-commerce businesses that have already obtained EC Trust's blue or red marks since such businesses generally maintain good quality in their products and services. Accordingly, handling claims and complaints are not main operations for EC Trust.

(6) Dispute resolution support

While Trustmark systems could be "indirect" but effective measures for consumer protection in e-commerce, dispute resolution support (i.e., forwarding specific claims and complaints to e-commerce businesses, referring to experts, representing customers in dispute resolution procedures,

financial support for dispute resolution, providing mediation and/or arbitration services, etc.) is another activity or system to protect e-commerce customers. Two Trustmark issuing organizations (Sinocredito and EC Trust) accept customers' claims and complaints; however, their rules for handling claims and complaints do not seem to be planned for specific dispute resolution support.

To date, there is no statute or system that provides support to customers for e-commerce-related disputes. CCA, however, has been providing consumer support even in the context of "consumer" dispute resolutions, and such consumer disputes may include disputes that arise in the e-commerce context.

CCA is an association whose legal basis is expressly stated in the Act on Protection of Consumer Rights and Interests(中华人民共和国消费者权益保护法; hereinafter referred to as the "Consumer Protection Act"). Furthermore, the Consumer Protection Act provides five methods to resolve consumer related disputes, such as: (i) settlement; (ii) request to CCA for mediation; (iii); request to relevant administrative sections; (iv) request for arbitration if parties agree on arbitration and; (v) lawsuit at the People's court (Article 34 of the Consumer Protection Act).

Furthermore, CCA is authorized to participate in administrative procedures sponsored by the governmental section to support consumers, and works as an "advocate" for consumers against anti-consumer activities (Article 31 and 32 of the Consumer Protection Act). This shows that the CCA is not only a private organization, but has been given power to enforce China's consumer protection policy. For that purpose, CCA is prohibited from conducting any activities for its own profit and from collecting fees or charges from businesses.

CCA has been handling more than sixty thousand (60,000) consumers' claims and complaints every year. Through such operations, CCA has obtained sufficient experience and know-how for handling consumers' disputes against businesses¹⁵. CCA also posts that it has an attorney team

¹⁵ CCA periodically publishes a consumers' claims and complaints report, in which it analyzes the causes and trends of such claims and complaints. Furthermore, CCA introduces and explains precedents to show consumers how consumer disputes could be solved by various procedures.

that can operate as its counsel or as the consumer's counsel¹⁶. CCA, however, does not have an established and specialized practice, nor specific sections for e-commerce disputes. It is true that CCA has been accepting more and more claims and complaints via email and other electronic transmissions, and CCA also posts instructions for sending claims and complaints to CCA¹⁷ via email. Accordingly, email claims and complaints are increasing in number, but CCA has not yet established nor changed its system for dispute resolution using electronic transmissions.

Other than CCA, as reported in the previous chapters, e-commerce-focused organizations such as Sinocredito and EC Trust do not have specialized systems or teams for supporting consumers in e-commerce disputes. On the other hand, some websites show that they have some connections to volunteer or “pro-bono” attorneys. Even groups of attorneys announce by themselves that they can help consumers in e-commerce disputes¹⁸. Others announce that they could take on the role of an online dispute resolution organization.¹⁹ Unfortunately, none of these organizations or groups replied to our requests to conduct an interview during our visit to China, and so we could not know the details and background stories for such organizations and groups.

(7) Summary

China has clearly initiated its approach towards issues like rule-making and Trustmark systems, which are already common issues in some other counties and areas. China's unique aspect is that the government or policy making sections take strong leadership even if actual enforcement of such policies might be made, on appearance, by the private sector. Trustmark systems started by CIECC and Sinocredito are good examples of such government-driven projects. On the other hand, private sector organizations like EC Trust have also initiated services for Trustmarks and, on appearance, have already introduced a considerably integrated system such as comprehensive guidelines for the review of applications. It would be difficult

¹⁶ CCA listed several lawyers as its counsels and/or consumers' counsels, named as the "CCA Attorneys Team (中消协律师团)" <http://www.cca.org.cn/web/lst/lst.jsp>

¹⁷ <http://www.cca.org.cn/web/xfts/xfts.jsp>

¹⁸ <http://www.chinaeclaw.com/>

¹⁹ <http://www.odr.com.cn/>

to say which of the government-driven projects, or the private sector, should take leadership, but the government's strong leadership and its human and financial resources must offer a greater impact in the coming years. In any way, the most important thing is to enforce the system effectively.

As to legal and regulatory structures, although China is very keen on organizing reasonable and effective legal structures, it seems that laws, regulations, and circulations (which could be legally effective to the entities and activities in China) sometimes overlap with each other, which leads to difficulty in understanding what the dominant rules are that should be applied to e-commerce. In addition, the complexity of governmental sections deteriorates the effective enforcement of the legal system applied to e-commerce. In such an environment, although it was not intended to be a legally effective rule, MOC's Guiding Opinions are strongly expected to be the foundation for future developments in the legal and regulatory fields.

1.7. Japan

(1) E-commerce market

In Japan, government official statistics on e-commerce are not yet available. METI plans to start designated surveys according to statistics laws in 2009. Therefore, this report is based upon the results of obtainable surveys carried out independently by some government offices and also upon consultations and questionnaires carried out by the private-sector.

The number of internet users in Japan was estimated to be 88.11 million in 2007, which marked an increase of 0.7% over the previous year. The internet's penetration rate was estimated to be 69.0% at the end of 2007, which marked an increase of 0.5 points over the previous year.

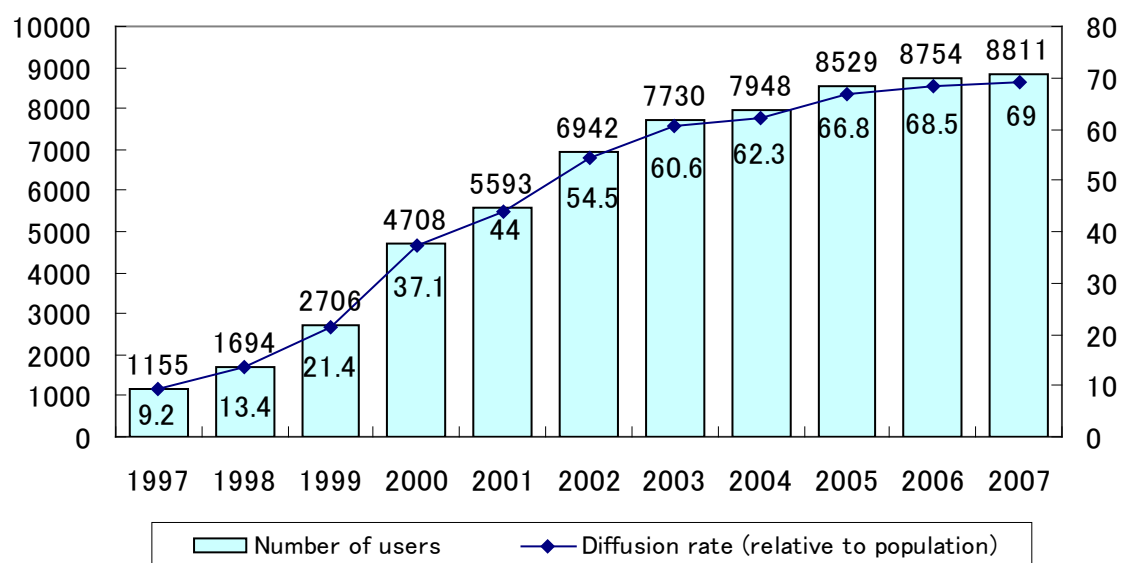


Figure 1-7-1 The number of internet users and diffusion rate²⁰

²⁰“White Paper on Information and Communications in Japan,” Ministry of Internal Affairs and Communications, 2008

At the end of 2007, the share of broadband use was 40.6% of the entire population above age 6. This figure accounts for 79.6% of all households using the internet. By age, growth in the use of the internet among the younger generation was significant compared to the results at the end of 2004. Broadband use among those aged 13-19 and 20-29 exceeded 60% of all users at the end of 2007.

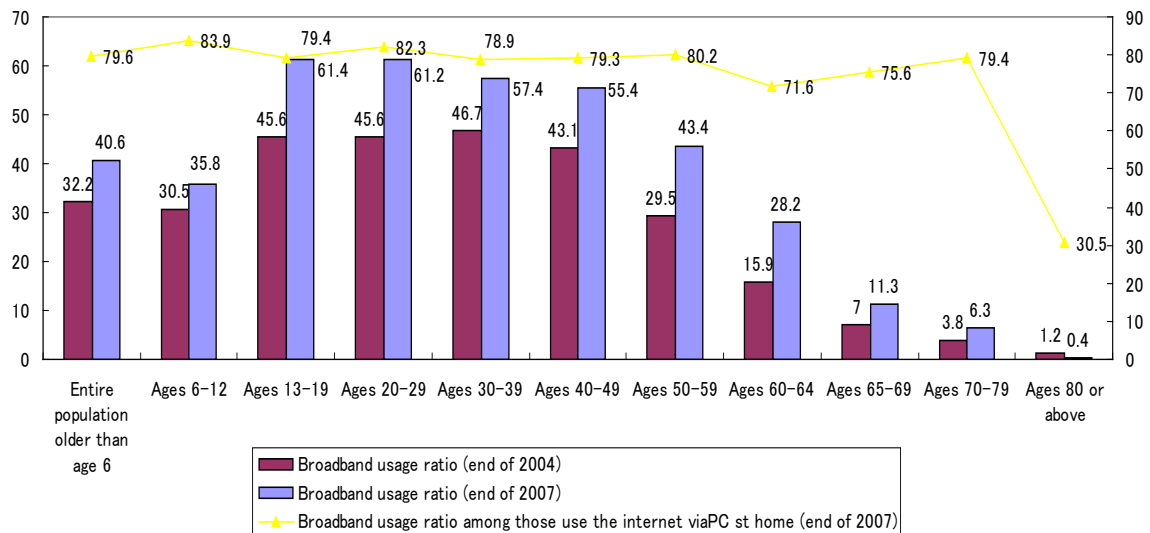


Figure 1-7-2 Broadband usage²¹

²¹ “White Paper on Information and Communications in Japan,” Ministry of Internal Affairs and Communications, in 2008

A survey estimates a big expansion in Japan's e-commerce market over the next five years. In this estimated expansion, mobile commerce is expected to play a leading role. Japan's growing mobile commerce market will be illustrated later in this report.

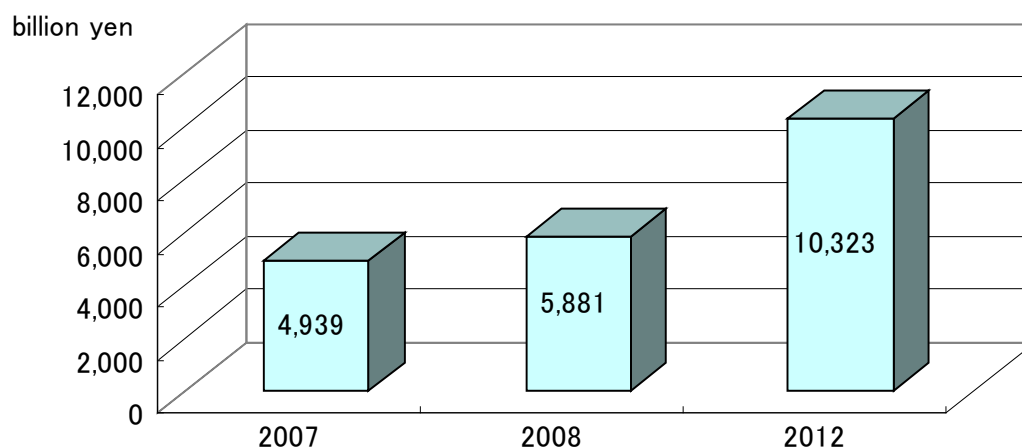


Figure 1-7-3 Forecast of business to consumer (B2C) EC market size in Japan ²²

²² Projection of IT market size in Japan surveyed by Nomura Research Institute in December, 2007

In another survey, general retail, which refers to general merchandise sold by major mail-order companies, holds the biggest share among hot-selling products. Other than that, home electrical appliances and traveling are expanding sales in the e-commerce market in Japan.

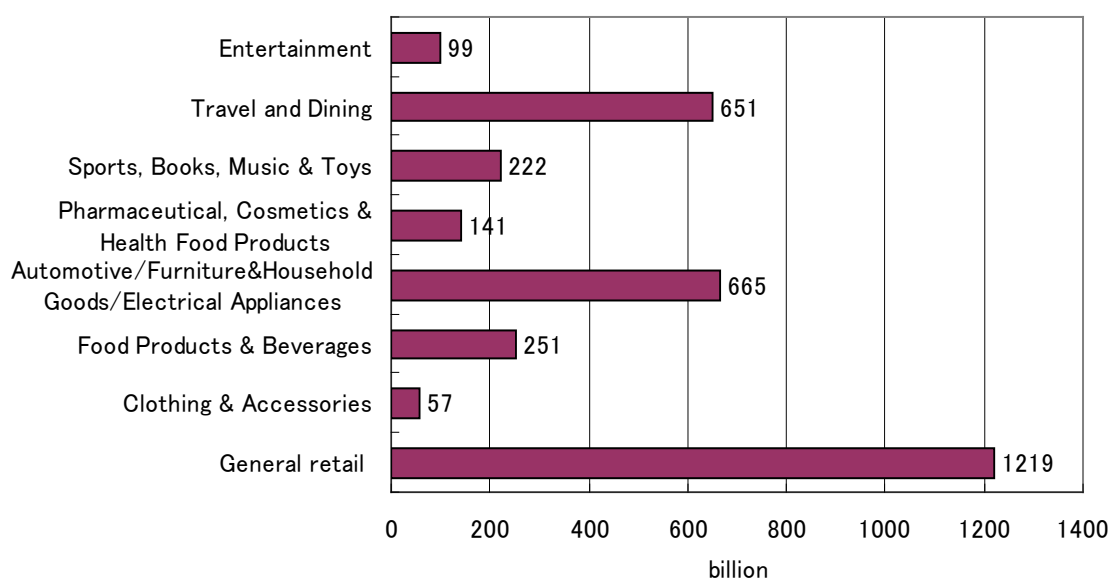


Figure 1-7-4 Hot-selling products²³

²³ “The Results of the 2007 e-Commerce Market Survey,” by METI

The ratio of mobile phone internet use accounted for 55.4% of the entire population above age 6 as of the end of 2007. Compared to the results as of the end of 2004, growth is significant among those aged 50 and older. However, what should be noted is the ratio of the younger generation. The survey here shows that over 75% of the population between ages 13 and 49 are mobile phone internet users as of the end of 2007. Compared to the end of 2004, the increase in the 13-19 age group is notable.

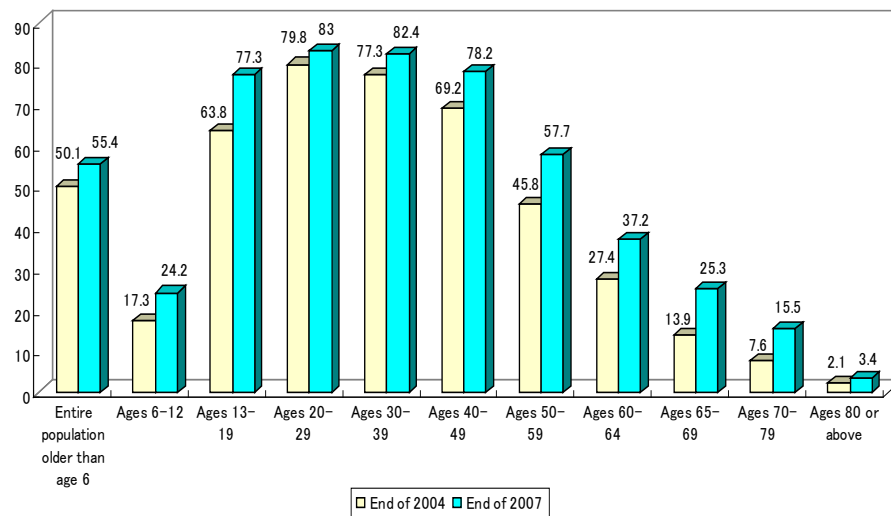


Figure 1-7-5 Mobile phone internet usage²⁴

²⁴ “White Paper on Information and Communications in Japan,” Ministry of Internal Affairs and Communications, in 2008

There are three categories in the mobile commerce market. The first is mail-order, the second is services such as sales of tickets and the last is transactions including stock market and auction trading fees. The market size of the mobile commerce market in 2007 was 72.31 billion yen, which increased by 129% over the previous year.

The mail-order category showed a year-to-year increase of 127%, to 32.92 billion yen. This rapid growth is due to the fact that the number of mobile commerce purchasers is growing among young to middle-aged people as well as those in their late-teens and early twenties. Another contributing factor is that the purchase of the latest electronic appliances is also becoming popular in the mobile market because of the increase in numbers and types of those products.

The services category showed a 140% increase over the previous year (2006-2007), whereas the transactions category has been growing slowly. The overall mobile market is on the increase.

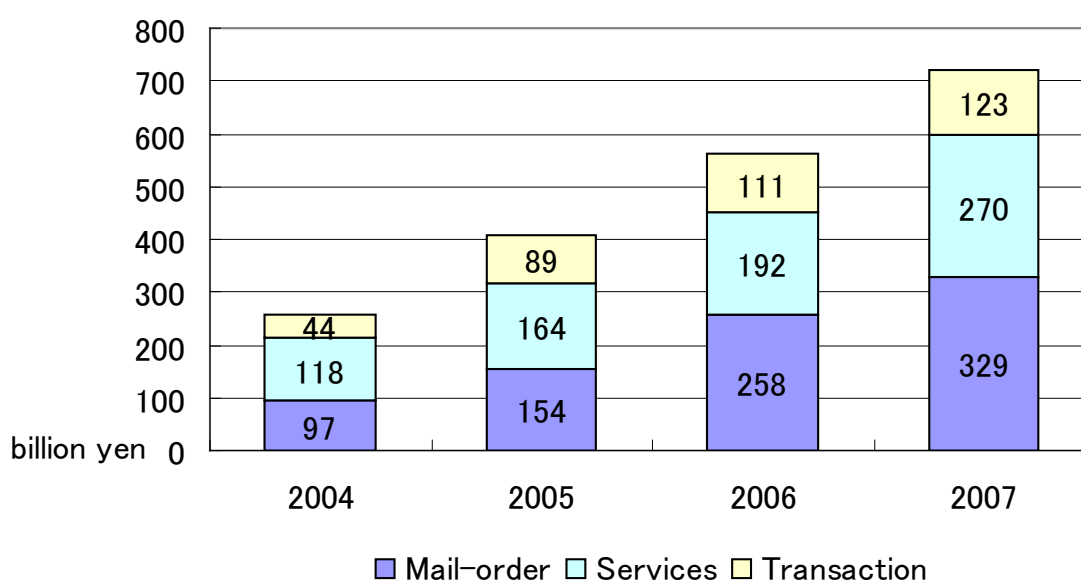


Figure 1-7-6 Mobile commerce market in Japan²⁵

²⁵ Mobile content forum held on July 18, 2008

According to a METI survey, the rate of those who have bought something via the internet reached 86.9% of the entire internet population above age 10 in 2007. Online shopping has become a well-established means of purchasing. The growth of e-commerce shoppers has become the major cause of the robust expansion of the B2C e-commerce market in Japan.

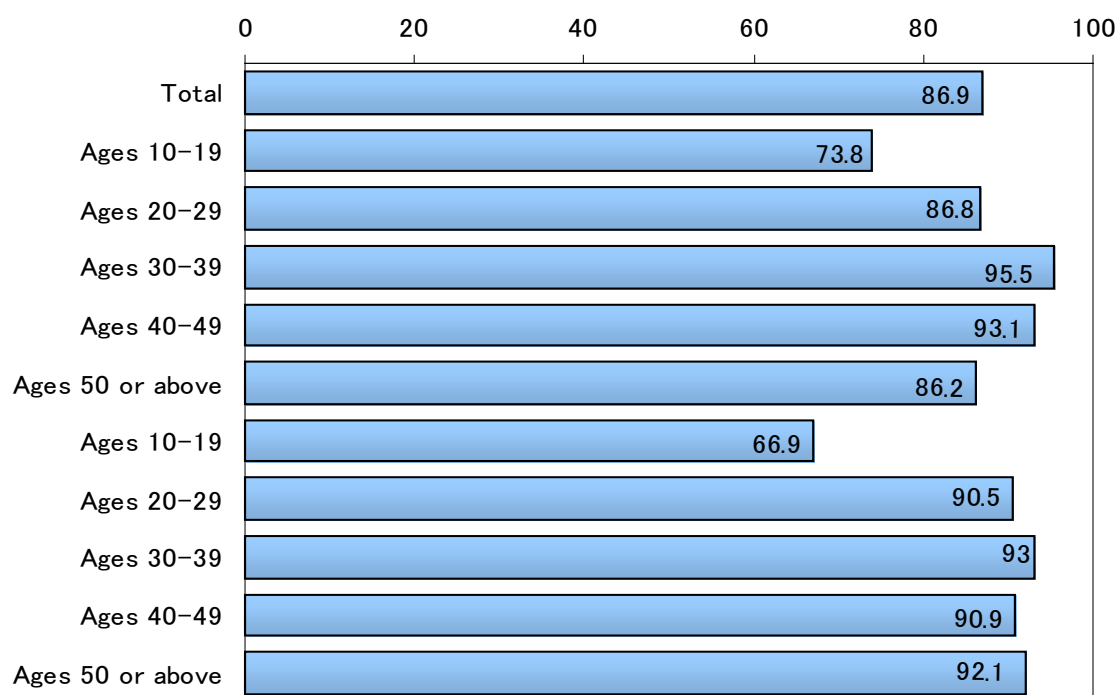


Figure 1-7-7 Experience of online shopping²⁶

²⁶ Results of the 2007 e-Commerce Market Survey (METI)

In choosing online shopping sites, “cheap delivery cost” is considered as the most important point by consumers. The sixth-ranked point is “fast delivery” and the 10th ranked point is “delivery to one’s convenient place”. To fulfill these consumer expectations, the maturity of the logistics infrastructure is indispensable.

Also, the fact that “convenient means of settlement (is selectable)” holds the fifth rank is notable, because variation in payment methods is expected to significantly promote e-commerce.



Figure 1-7-8 Issues of consideration in choosing online shopping sites²⁷

²⁷ Survey Report on the Current Status and Problems of E-Commerce and its Means of Settlement (March, 2005). (Compiled by Institute for Policy Science based on Survey by MyVoice.com)

The most popular means of payment for online shopping is the credit card, and its share accounted for 62.5% in 2007, which is far more than 50%.

Furthermore, cash on delivery (COD), which holds the second position with a share of 14.7%, is notable. COD is a system in which a courier or delivery-to-home company acts as an agent to collect payment. An online shopper makes payment by cash to a courier when he or she delivers merchandise. This system has evolved along with the growth of home delivery, and must be based on a robust logistics system. The increasing use of COD can be explained by the following reasons: 1) consumers are able to make payment at the point of merchandise receipt; 2) consumers do not have to go to a bank or a post office to make payment; 3) consumers do not have to worry about the protection of credit card information. It has been observed that COD service is favored by the older generation.

The third means of payment, payment at convenience stores, also holds a big share of 11.4%, because convenient stores are usually closer to home compared to banks and post offices, and are open late everyday. The total share of these three major means of settlement accounts for 88.7%.

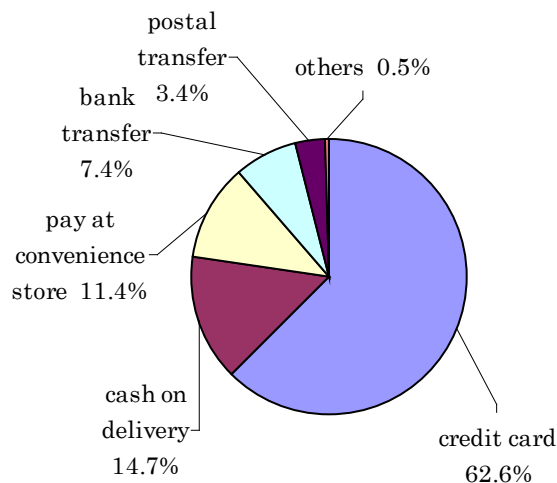


Figure 1-7-9 Means of payment for online shopping²⁸

²⁸ Survey on means of settlement in net shopping 2007 (Net Protections Co, Ltd.)

Logistics play an important role in e-commerce. In Japan, home delivery by parcel delivery service has developed to a full extent. Courier and delivery-to-home services deliver merchandise on the following day after the purchase date in most cases. Also, cash on delivery is available. The logistical network has become a convenient and indispensable form of infrastructure not only for e-commerce delivery but also for sending parcels for other purposes in daily life.

The biggest reason that a consumer conducts overseas online shopping is “merchandise or service not available in Japan”, and this corresponds to 76% of the total number of people who have experience in overseas online shopping. The reason number two is “merchandise or service inexpensive”, which corresponds to 48%. (In the survey, multiple answers were allowed.)

Prior to making a purchase through overseas online shopping, in many cases, a consumer performs casual research on an overseas shopping site. “Obtain reputation by net search or by word of mouth” is the most common method of research, and “ask at BBS or mailing list or community site” follows as the second most common method.

Also, the most common merchandise that consumers purchase at overseas shopping sites is “clothes and shoes”, which is followed by “CD, DVD, video, and game software” (excluding online games).

On the other hand, consumers who do not use overseas shopping sites have their reasons. Number one is “not sure about the reliability of overseas online shopping sites”, and number two is “not sure if the merchandise can be delivered without problems.”

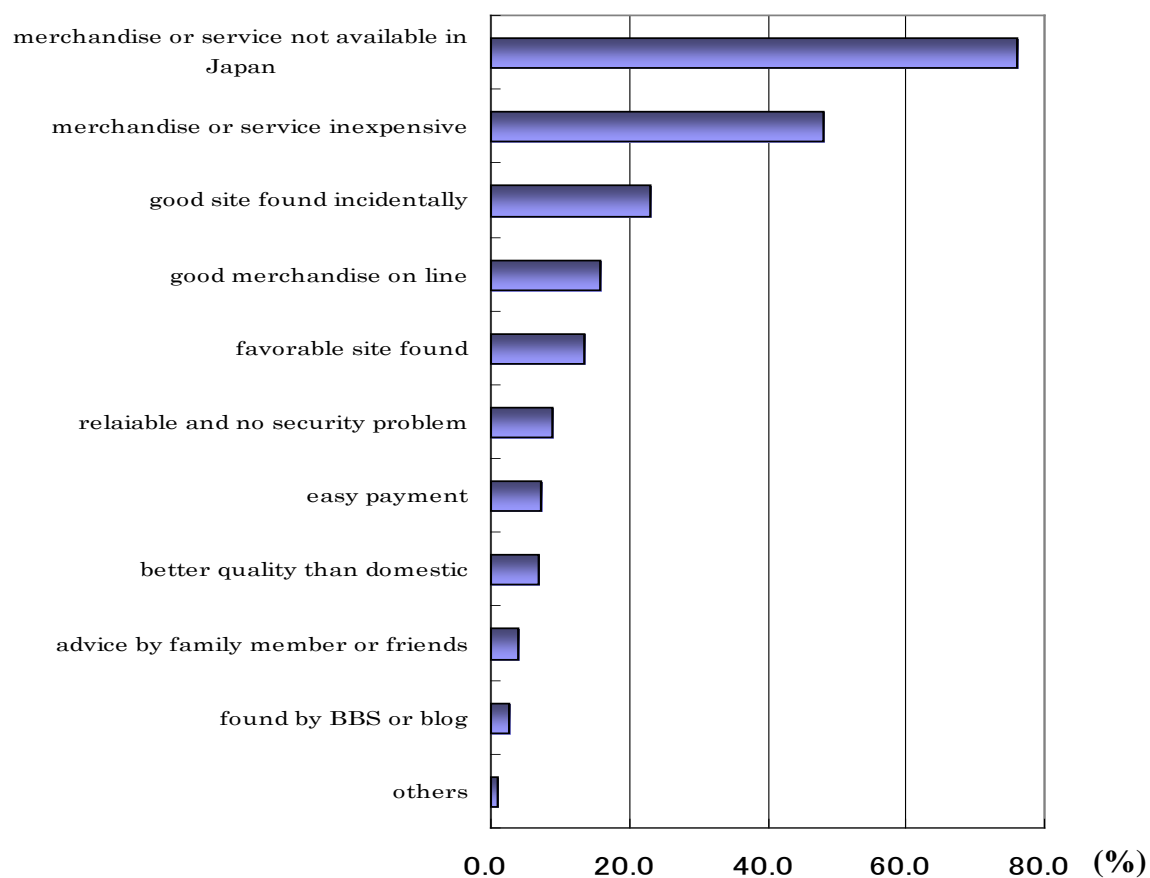


Figure 1-7-10 Reasons for overseas online shopping²⁹

²⁹ Survey Report on Appropriate Solutions to Troubles Concerning International E-Commerce 2008 (EC Network)

In overseas online shopping by Japanese consumers, the country that accounts for the most e-commerce transaction is the USA, which accounts for 76% of the total number of those who have experience in overseas online shopping. (In the survey, multiple answers were allowed.) Number two is the UK (14.8%), number three is France (8.5%), number four is China (8.1%) and number five is South Korea (7.4%).

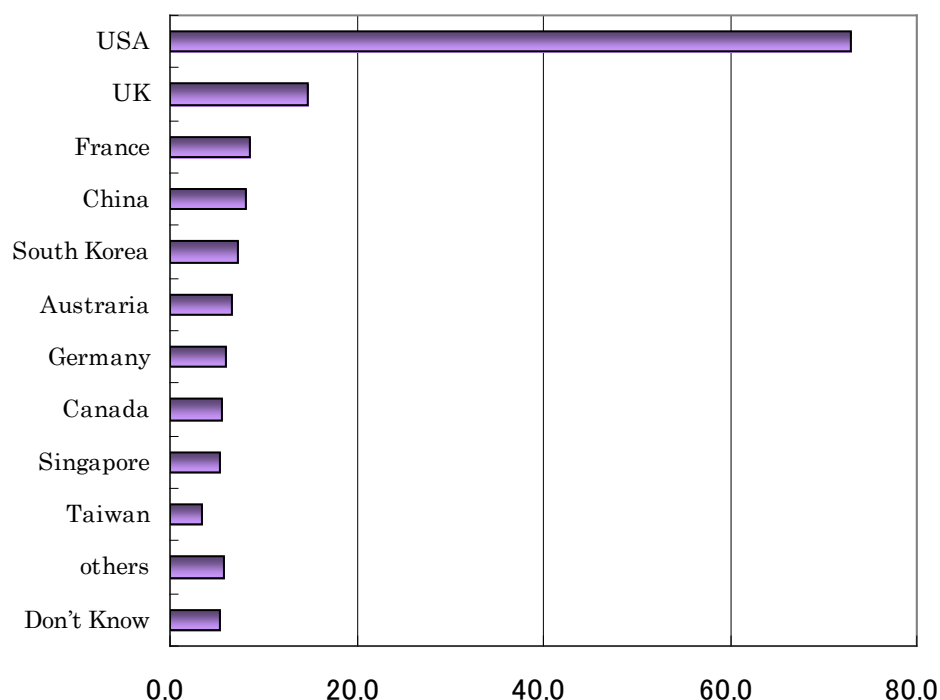


Figure 1-7-11 Countries that account for the most e-commerce use in overseas online shopping³⁰

(2) Legal systems related to e-commerce

i) Introduction

In Japan, there are many laws applicable to e-commerce. They can be divided into four major categories, namely: "basic laws regulating commercial transactions", "consumer protection laws", "laws concerning the sale and advertisement of specific goods" and "laws concerning handling information and various rights".

³⁰ Survey Report on Appropriate Solutions to Troubles Concerning International E-commerce 2008 (EC Network)

ii) Basic laws regulating commercial transactions

This category includes the Civil Code³¹, the Commercial Code and the Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice³² (“Electronic Consumer Contracts Act”).

The Civil Code and Commercial Code define general requirements regarding the conclusion and validity of contracts, methods and effects of termination and cancellation, general rights and obligations of parties to contracts, and so on.

The Electronic Consumer Contracts Act makes special exceptions to the Civil Code.

The objective of this Act is to provide: (i) basic rules for the timing of the conclusion of an electronic contract, and; (ii) consumer protection by invalidating an electronic consumer contract concluded by mistake.

First, under the Civil Code, a contract between persons at a distance is concluded when the acceptance notice is dispatched. On the other hand, under this Act, a contract is concluded when the acceptance notice has arrived, as long as the notice is given by an electronic method even though the contract is made between persons at a distance.

Second, regarding mistakes made in the process of conclusion of a contract, there is a possibility that consumers could make an offer or acceptance unintentionally by errors in operation of computers in e-commerce. Under the Civil Code, a manifestation of intention such as an offer or acceptance is invalid if such a manifestation is made by mistake, as long as the manifesting person is not grossly negligent. In this light, there is a possibility that a consumer who makes an error in operation cannot assert the invalidity of the contract because such an error may be found to be brought by gross negligence. Therefore, from the perspective of consumer protection, the law provides that a consumer can assert invalidity of the contract based on such errors in operation in the context of electronic consumer contracts.

³¹ The Japanese Government does not officially issue English translations of Japanese laws, thus please note that the Japanese laws described herein are named in English only for the purposes of convenience. However, unofficial translations of some laws are available at the Cabinet Secretariat website (<http://www.cas.go.jp/jp/seisaku/hourei/data2.html#si>). Regarding the Civil Code, please refer to <http://www.cas.go.jp/jp/seisaku/hourei/data/CC1.pdf>

³² <http://www.cas.go.jp/jp/seisaku/hourei/data/ASP.pdf>

However, a consumer cannot assert invalidity if a business entity takes measures to confirm the consumer's intention before the consumer makes an offer or acceptance. Thus, a business entity is required to take such confirmation measures as preparing a confirmation screen, which provides consumers with a final opportunity to confirm and change the content of the offer or acceptance before clicking the send button in an order screen.

iii) Consumer protection laws

This category includes the Act on Specified Commercial Transactions³³ (“ASCT”), the Consumer Contract Act³⁴ (“CCA”), and the Act against Unjustifiable Premiums and Misleading Representations³⁵ (“AUPMR”).

The objective of the ASCT is to protect consumers' interests and to achieve appropriate and smooth distribution of goods and services by ensuring fairness in consumer transactions such as direct marketing and mail order sales including e-commerce.

For that objective, the ASCT mainly regulates advertisement and solicitation of consumers by business entities.

First, the ASCT prohibits business entities from causing a consumer to enter into an application for a sales contract against his will. In terms of e-commerce, business entities need to show an appropriate confirmation screen on a website so that consumers can easily recognize that the operation of the computer, such as clicking on a button, constitutes an application for a contract and so that consumers can easily confirm and change the content of the application.

Second, the ASCT regulates email advertisement. When the ASCT introduced a regulation by amendment in 2002, it adopted the “opt-out” policy and prohibited business entities from sending email advertisement to recipients who have already made a notification of refusal. However, because such regulation was not effective for preventing spam emails, the ASCT was amended again in 2008, and it adopted the “opt-in” policy. Under the current law, business entities may send email advertisements only to those who have agreed to receive such advertisements in advance.

In addition to these provisions, the amendment in 2008 regarding

³³ <http://www.cas.go.jp/jp/seisaku/hourei/data/ASC.pdf>

³⁴ <http://www.cas.go.jp/jp/seisaku/hourei/data/CCA.pdf>

³⁵ <http://www.cas.go.jp/jp/seisaku/hourei/data/aau.pdf>

disclosure of return and cancellation policies has made it possible for consumers to terminate contracts if the business entity did not clearly state the conditions for return of goods in the advertisement. Due to constant trouble regarding return of goods, the ASCT made a new regulation similar to a “cooling-off” system in order to ensure that business entities state the conditions for return clearly and consumers can recognize them correctly.

Regarding the CCA, the objective is to protect the interests of consumers by denying the validity of contracts that are made through inappropriate solicitation by business entities, or that are unreasonably advantageous to business entities.

First, under the CCA, a consumer can cancel a contract if a business entity solicits the consumer's offer or acceptance of the contract through misrepresentation.

Second, the following clauses in a consumer contract are invalid:

(a) A clause exempting a business entity completely from liability to compensate damages to a consumer arising from the business entity's default

(b) Any other clause unilaterally damaging the benefit of a consumer

In addition to these regulations, the amendment of the CCA in 2006 has enabled certified consumer associations to demand business entities to stop or prevent inappropriate acts. This is a kind of class action.

The AUPMR regulates solicitation of customers by false or excessive representations or excessive premiums, and intends to secure fair competition while creating an environment where consumers can choose goods and services appropriately. This Act is applicable to e-commerce if such misrepresentations are made in the course of e-commerce.

iv) Laws concerning the sale and advertisement of specific goods

This category includes the Food Sanitation Act³⁶, the Pharmaceutical Law, the Alcohol Tax Law, the Narcotic Law, the Swords and Firearms Control Law, the Act on Welfare and Management of Animals³⁷, and so on.

These laws prohibit selling food, drugs and medicines, liquor, and other contraband without permission or license, and they are also applicable to e-commerce.

³⁶ <http://www.cas.go.jp/jp/seisaku/hourei/data/fsa.pdf>

³⁷ <http://www.cas.go.jp/jp/seisaku/hourei/data/AWMA.pdf>

v) Laws concerning handling information and various rights

This category includes the Act on the Protection of Personal Information³⁸ (“APPI”), the Law concerning Restrictions on the Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identity Information of the Sender (“Providers Liability Restriction Law”), the Act on Regulation of Transmission of Specified Electronic Mail³⁹ (“ARTSEM”), the Copyright Act⁴⁰, and the Trademark Act⁴¹.

The objective of the APPI is to protect the rights and interests of individuals through fair treatment of personal information.

For that objective, an entity handling personal information assumes the following obligations. Such an entity shall: (i) specify and disclose the purpose of using personal information, (ii) acquire personal information in a lawful way, (iii) take security measures to protect personal information, and (iv) not provide personal information to a third party without prior approval of the individual.

This law is applicable to e-commerce when a business entity acquires personal information through e-commerce.

In relation to the APPI, governmental ministries and agencies have provided respective guidelines corresponding to respective business areas and imposed special regulations in specified areas.

The Providers Liability Restriction Law makes it clear, for example, in cases of defamation in cyberspace, whether a telecommunication service provider is required to delete statements of defamation written on a website, and whether it is required to provide the victim with information about the defamer in response to the victim's request.

The ARTSEM regulates spam emails. Especially, according to the current law amended in 2008, sending email advertisements without prior consent of the recipient is prohibited.

The Copyright Act and Trademark Act regulate, for example, the use of copyrighted work or similar trademarks in an e-commerce site.

³⁸ <http://www.cas.go.jp/jp/seisaku/hourei/data/APPI.pdf>

³⁹ <http://www.cas.go.jp/jp/seisaku/hourei/data/ACPT.pdf>

⁴⁰ <http://www.cas.go.jp/jp/seisaku/hourei/data/CA.pdf>

⁴¹ <http://www.cas.go.jp/jp/seisaku/hourei/data/TA.pdf>

vi) Guidelines

As it is sometimes difficult to predict how these laws are applied to individual cases, the Ministry of Economy, Trade and Industry provides interpretations regarding the application of these laws to various legal issues related to e-commerce in the "Interpretative Guidelines on Electronic Commerce and Information Property Transactions"⁴².

Private groups have also been developing their own guidelines regarding e-commerce, such as: the (i) Consumer Protection Guidelines of E-commerce, by the Electronic Commerce Promotion Council of Japan (1998); (ii) E-Commerce Guidelines, by Japan Direct Marketing Association (1999), and; (iii) Guide for EC Sellers/Guide for Auction Users, by EC Network (2006).

(3) Efforts to build confidence in e-commerce

Various efforts to establish a secure and safe e-commerce environment have been undertaken in Japan. This chapter explains these efforts, from both the public and private sectors, and provides specific examples including Trustmark programs, trends of consumer complaints, and three real cases. First, we provide examples of three Trustmark programs to compare, and we examine each effort. Second, we delve into what types of trouble Japanese consumers face, with an analysis of consumer complaints data accumulated by a complaint handling organization in Japan. Lastly, we look into three complaints of cross-border e-commerce transactions for further consideration on the need for effective dispute resolution.

i) Trustmark programs

(a) Online shopping Trustmarks by industry groups

In many countries including Japan, Trustmark programs have been recognized as a pillar of building confidence in e-commerce. Japan's Trustmark program, called Online Shopping Trust Mark⁴³, started in 2000 to provide assurance on the safety of e-commerce businesses and enhance consumer confidence in e-commerce. Both the Japan Direct Marketing

⁴²

http://www.meti.go.jp/english/information/data/IT-policy/interpretative_guidelines_on_ec070628.pdf

⁴³ <http://www.jadma.org/e/ost.html>

Association⁴⁴ (JADMA) and the Japan Chamber of Commerce and Industry⁴⁵ (JCCCI) jointly created Online Shopping Trustmark and used the same mark. In the beginning, the total number of accredited websites exceeded 600, and it has since decreased to a little over 400. JCCI stopped issuing new marks in March 2008. JADMA still continues its operation, but does not actively promote the program. Regrettably, it is clear the program has not been very successful. One of the possible reasons for the lack of success of this Trustmark is that online shopping malls such as Rakuten⁴⁶ have successfully functioned as alternatives to Trustmarks.

(b) Online shopping Trustmarks created through private initiatives

Aside from the Trustmark programs of the above-mentioned industry groups, a private venture company has started a new Trustmark program. Established in 2007, TradeSafe⁴⁷ started its Trustmark certification service in July 2008, and about 30 websites hold its seals. One of the key differences from the conventional Trustmark programs is its unique services. TradeSafe offers its seal combined with alternative dispute resolution (ADR) and indemnity services. TradeSafe would compensate for up to 100,000 yen (approx. 1,000 USD) if a consumer has trouble with one of the accredited sites of TradeSafe and if the business could not find a remedy for the problem.



ERIA obtained approval to publish the seal of TradeSafe from TradeSafe Co. Ltd.

The certification criteria of TradeSafe are herein below:

- A. Physical existence of the shop and sustainability of the business
- B. Compliance with laws
- C. Commitment to abide by a code of conduct (agreed in the membership clauses)

⁴⁴ <http://www.jadma.org/e/>

⁴⁵ <http://www.jcci.or.jp/home-e.html>

⁴⁶ <http://event.rakuten.co.jp/en/>

⁴⁷ <http://www.tradesafe.co.jp/english/>

TradeSafe looks into documents and websites of applicants and examines the criteria A and B above after receiving applications. Then, TradeSafe secures the applicants' compliance with C above and issues the Trustmark certification (pictured above). Even after certifying marks, TradeSafe will conduct ongoing monitoring of the most recent status of its accredited businesses in diverse ways.

(c) PrivacyMark

There is another Trustmark program in Japan regarding protection of personal information. PrivacyMark⁴⁸ is a trademark that the Japan Information Processing Development Corporation⁴⁹ (JIPDEC) has registered for this service. PrivacyMark is not exclusively specialized for online shopping businesses. Since JIPDEC started providing PrivacyMark in 1998, companies that focus on business-to-business (B2B) transactions, as well as many major companies that operate off-line businesses, have obtained the mark. JIPDEC certifies a private information protection management system complying with Japanese Industrial Standards⁵⁰ (JIS). It is noteworthy that licensed companies point out that strengthening their in-house system of compliance is the second most important incentive for acquiring the PrivacyMark certification, following obtaining trust from consumers.



ERIA obtained approval to publish PrivacyMark from JIPDEC.

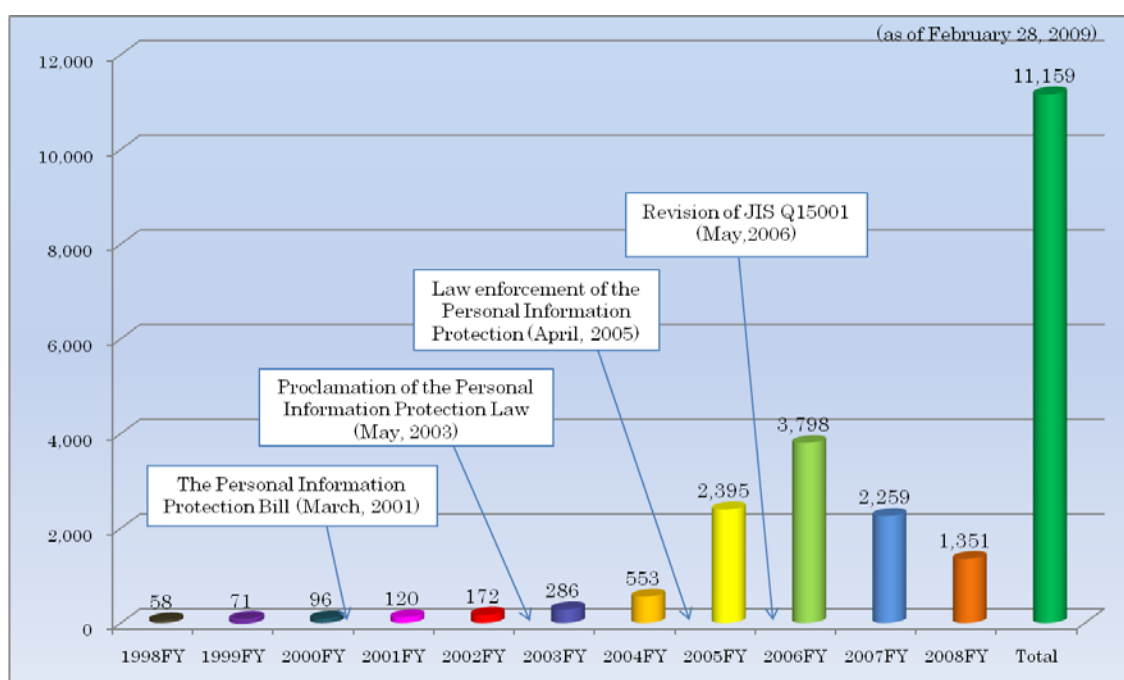
The number of accredited entities dramatically increased after the enactment of the Personal Information Protection Law in 2005. The total number of accredited entities is now 11,159 as of the end of February 2009. According to law, businesses have a responsibility to supervise and ensure that their contractors protect personal data. Responding to increased

⁴⁸ <http://privacymark.org/>

⁴⁹ <http://www.jipdec.or.jp/eng/>

⁵⁰ <http://www.jisc.go.jp/eng/jis-act/index.html>

protection of personal data, acquiring PrivacyMark has become a condition for bidding in many firms, so the number of PrivacyMark-certified businesses has grown at an accelerated pace. As a result, introducing the above-mentioned law and PrivacyMark program have helped raise the awareness of protecting personal information in Japan.



ERIA obtained approval to publish PrivacyMark from JIPDEC.

Figure 1-7-12 The cumulative number of PrivacyMark-accredited entities

ii) Consumer complaint handling efforts

(a) Japan's consumer complaint handling organizations

Consumer advisory organizations have played a significant role in building confidence in e-commerce, in addition to Trustmark programs. While various avenues are available for Japanese consumers, many of them usually first seek advice from the consumer affairs bureaus established by local governments throughout Japan when they encounter trouble arising from e-commerce transactions. However, these nationwide bureaus, other consumer consultation service agencies, the consultation services of the central governments and other private organizations are not often specialized

in e-commerce, so they frequently introduce consumers to EC Network⁵¹. EC Network is a private organization that handles complaints and disputes regarding online transactions. EC Network initiated a four-year ADR pilot project called ADR Office⁵², within the Next Generation Electronic Commerce Promotion Council of Japan (ECOM)⁵³, in April 2006. Since its establishment, EC Network has provided this consumer advisory service free of charge, and the Ministry of Economy, Trade and Industry⁵⁴ advocates EC Network's international activities including cross-border complaint handling. Thus, EC Network has become a hotline for local consumer affairs bureaus and it often receives phone calls from them. Of course, consumers also find EC Network by searching the internet themselves. It is the only organization that deals with cross-border complaints and consumer-to-consumer (C2C) trouble on internet auction sites, so consumers sometimes make a last-ditch bid to seek the counsel of EC Network. In order to lodge a complaint, consumers, including mobile phone users, are required to fill in a complaint form, and communication with consumers is done by email.

(b) Cross-border complaints

Tables and figures of consumer complaints, and study cases of cross-border complaints that EC Network received in 2007, will be described hereinafter in this chapter.

- Complaints from Japanese consumers

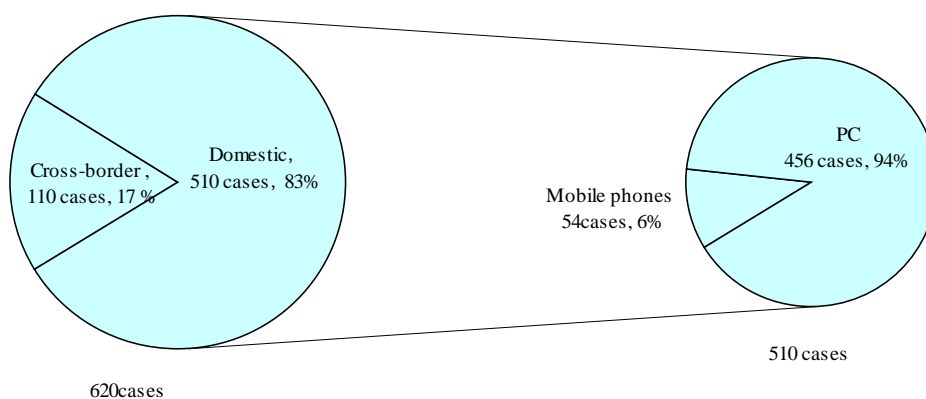
The total number of complaints from Japanese consumers was 620 in 2007. Of them, domestic complaints accounted for 510 cases. Trouble related to mobile transactions accounted for 54 cases (6 %).

⁵¹ <http://www.ecnetwork.jp/en/index.html>

⁵² ADR Office was closed in March, 2006. <http://www.ecom.jp/adr/en/>

⁵³ <http://www.ecom.jp/en/index.html>

⁵⁴ <http://www.meti.go.jp/english/index.html>



	FY 2006	FY 2007
Domestic Complaints	490	510
Cross-border Complaints	106	110
Total	596	620

Figure 1-7-13 Complaints from Japanese consumers

- Complaints from Japanese consumers (breakdown by nature of complaint)

We broke 432 cases of sales of goods down into four categories (shown in the graph below). Considering the practical realization of ICA-Net, which we discuss later in this report, the use of uniform classification with other complaint handling organizations should be considered in the future.

Consumer complaints about goods FY2007

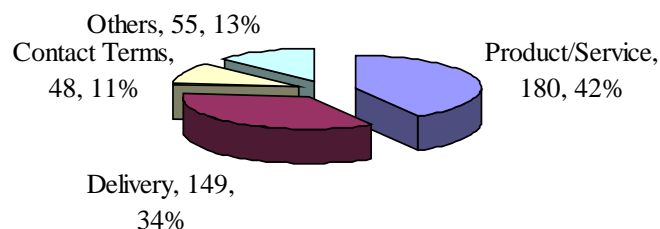


Figure 1-7-14 Breakdown by nature of complaint

- Complaints from Japanese consumers (breakdown by means of

settlement)

As the following graph shows, most Japanese consumers use bank transfers, credit cards or cash on delivery as the means of settlement when buying goods and services on the internet. Consumers who paid through bank transfer often got into trouble after they paid in advance.

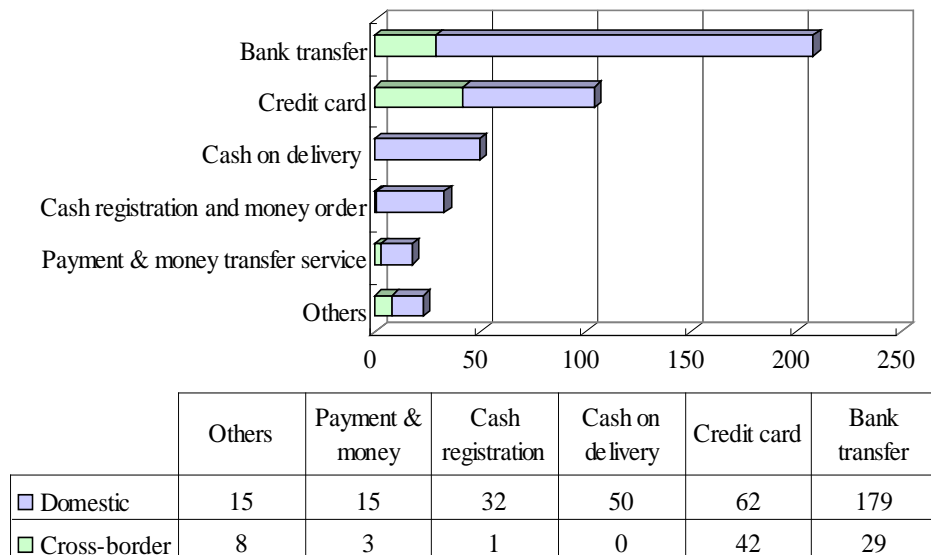


Figure 1-7-15 Breakdown by means of settlement

- Complaints from Japanese consumers (breakdown by amount of money involved)

In most transactions including cross-border cases, only a small amount of money is involved. Furthermore, in over 70 percent of transactions, consumers pay less than 100,000 yen (approx. 1,000 USD), and so consulting lawyers or filing lawsuits against e-commerce businesses may be unrealistic for consumers.

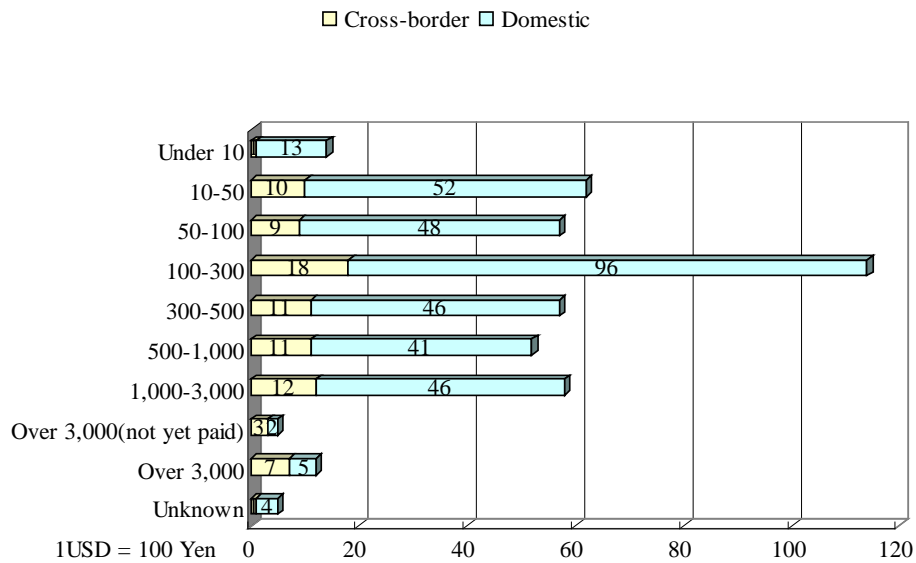


Figure1-7-16 Breakdown by amount of money involved

- The number of cross-border complaints (graph of e-commerce businesses and international consumer locations in 2007)

The total number of cross-border complaints was 136 in 2007. As shown here, more than half of the complaints were against American businesses, so we can see that many Japanese consumers evidently dealt with them. The rest of the locations of e-commerce businesses are diversified. Complaints from consumers outside Japan are varied as well.

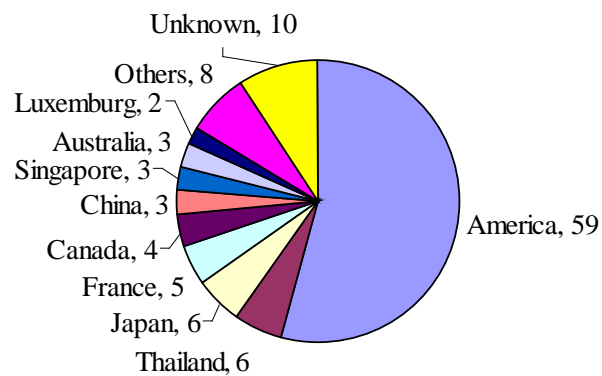


Figure1-7-17 Top e-commerce business locations of Japanese consumers (109 cases)

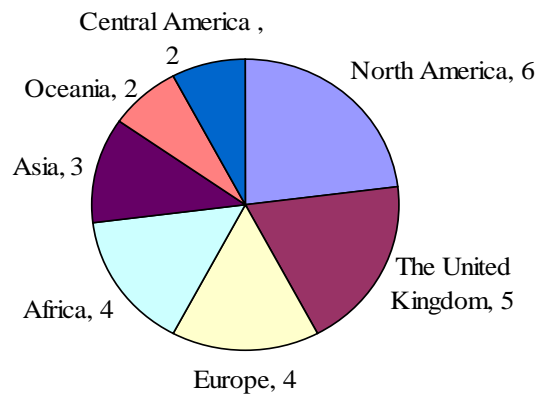


Figure1-7-18 Top international consumer locations (27 cases)

- Cross-border complaints from Japanese consumers (breakdown by nature of cross-border complaints)

Undelivered goods or services and lost contact with businesses are typical troubles cited in cross-border complaints. Whether those businesses are fraudulent or went bankrupt is very difficult to examine, considering the situation in various countries for complaint handling organizations. Also, Japanese consumers who purchased goods from overseas online shops after seeing websites written in Japanese by the shops have filed complaints to EC Network.

Cross-border complaints FY2007

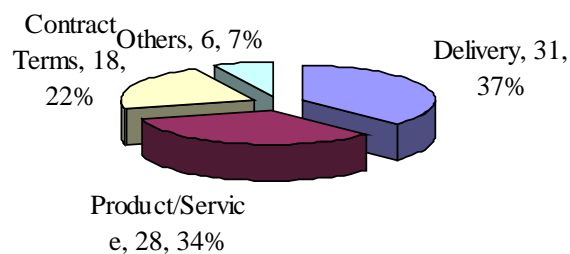


Figure1-7-19 Breakdown by nature of complaints (2007FY)

(c) Analysis of three study cases of cross-border disputes

Not yet received a bag from Luxembourg

A Japanese consumer bought a famous brand name bag through a website in Luxembourg. All explanations were written in Japanese. The complainant paid through bank transfer and chose 7-10 day parcel post without insurance. Over three weeks after her order, she did not receive the goods, so she sought a full refund from the business, but it refused to do so because the business recommends insured parcel post and claimed uninsured parcels are not refundable on its website. EC Network advised the complainant to confirm whether the shipment was completed. A month later, the complainant received the ordered goods.

This complainant could communicate in Japanese with the business, so she negotiated by herself to solve this case. If the business was not Japanese and was staffed entirely by locals in Luxembourg, this complainant would have faced challenges in terms of differences in language, legal systems and business practices. If this complaint handling organization knew a contact point in Luxembourg, it could have assisted in solving this case in a timely manner.

Lost contact with a shop in Thailand

A Japanese consumer ordered a mobile phone through a website in Thailand as the device was not available in Japan. All explanations were written in Japanese. The goods did not arrive even after payment. The business never responded to telephone calls or emails from the consumer. The consumer wished that the business would either send the item or give a full refund. The complainant indicated that based on information on online bulletin boards, there seemed to be many other victims in Japan.

EC Network asked the Ministry of Commerce (MOC) of Thailand for any relevant information about the business. All e-commerce businesses have to register with MOC, but the business in question had not been registered, so they could not obtain any information about the business even though they conducted an examination. They also said that getting information from the internet service provider that may have had a contract with the business was difficult due to concerns about contravening privacy protection regulations.

Although EC Network could not find out whether this complainant obtained the goods or was refunded in the end, he did not ask for further assistance, so EC Network closed this case. Despite the fact that there was no agreement between MOC and EC Network, MOC gave its best efforts in this case. In Thailand, all web-based traders are required to register with MOC. For complaint handling organizations in different countries, obtaining such information from Thailand may be helpful when assisting in handling complaints and disputes. This collaboration therefore demonstrates potential, and can be considered as an example for future development of international cooperation amongst complaint handling organizations.

Received a rusted car from Japan

A Canadian consumer bought a Japanese used car (Nissan Skyline GTR) through the website of a used car dealer run by an Australian in Japan. He paid 910,000 yen (approx. 9,100 USD) by bank transfer. When the complainant received the car three months later, the entire trunk and rear doors were rusted, although this business had only posted a few damages from collision on its website. The complainant claimed he would not have purchased this car if he had known about the damages. He contacted the business, but it insisted that the car became rusty during the 10-day shipment. The complainant ended up spending the equivalent of hundreds of thousands of yen for repair. Although the business told him it would pay about 100,000 yen (1,000 USD) in compensation, the business continued to ignore any contacts from him and it has not lived up to its promise.

Even though the car was rusted, this was in fact one of the better cases because at least this complainant received his car. Most non-Japanese consumers who fell victim to fraudulent businesses paid in advance, did not receive the ordered cars and then lost contact with those businesses. Although EC Network has promoted awareness of the risks of purchasing of used cars on its website⁵⁵, many foreign consumers file complaints about the import of used cars from Japan, and the number of these complaints is not decreasing. To understand how far the organization could be of assistance to those consumers, EC Network consulted Tokyo Metropolitan Police about these cases. The Police suggested that the agents of foreign consumers can submit police reports, but there is little that the police can do in the absence of hearing first-hand details from the victims who live overseas. As for fraudulent cases, there may be limitations to what complaint handling organizations can accomplish without the cooperation of domestic law enforcement entities and the police.

(4) Toward international cooperation for consumer disputes on e-commerce

We analyzed Japan's efforts to build confidence in e-commerce and clarified some of the trends of consumer complaints in the previous chapter. We also described the difficulties of handling cross-border complaints. In this section, we focus on bilateral cooperation on complaint handling between Japan and North

⁵⁵ <http://www.ecnetwork.jp/en/public/shoppingtips.html>

America. By examining this pioneering collaboration, we verify the practical effectiveness of multilateral cooperation on complaint handling.

i) Significance of the bilateral collaboration

The bilateral partnership between the Better Business Bureau (BBB)⁵⁶ of North America and EC Network of Japan was the world's first international cooperation amongst complaint handling organizations. The diagram below shows the process of complaint handling between the two bodies. We assume a case where a Japanese consumer bought goods on the shopping site of a US business. A transaction has been made between said Japanese consumer and the US business (1). When the consumer encounters problems during this transaction, such as non-delivery of goods, shipment of the wrong item, etc., the consumer can file a complaint in Japanese by filling out a complaint form on EC Network's website (2).

EC Network translates the consumer's complaint into English and reports this to the BBB head office by email. The format (required fields) has already been pre-determined in the agreement (3). BBB staff forwards this case to the local BBB in the state where said business is located (4), and then the local BBB contacts the business (5). At this stage, both EC Network and BBB simply play a role as a messenger for the complaint lodged by the consumer. They do not give any advice, guidance, or suggestions.

The business informs the local BBB of a solution for this case after being contacted by the local BBB, (6), -- for example, "we will deliver the goods in 10 days", or "we will refund the customer as soon as we can confirm that the goods have been returned". The local BBB conveys the business' response to the BBB head office (7), and then BBB forwards this to EC Network (8). Step (8) is done by email, but steps (6) and (7) can be done by phone or web chat as well. EC Network translates the offer of the business received from BBB into Japanese, and sends it to the consumer (9). If the consumer accepts the response, the case is settled, and EC Network reports to BBB accordingly. If the consumer does not accept the offer from the business, then EC Network sends the consumer's message to BBB again, and the above process will be repeated. Even if the consumer accepts the offer, EC Network regards the case as settled only when the consumer confirms the implementation of everything that the business has promised, e.g. delivery of ordered goods or a

⁵⁶ <http://www.bbb.org/>

refund.

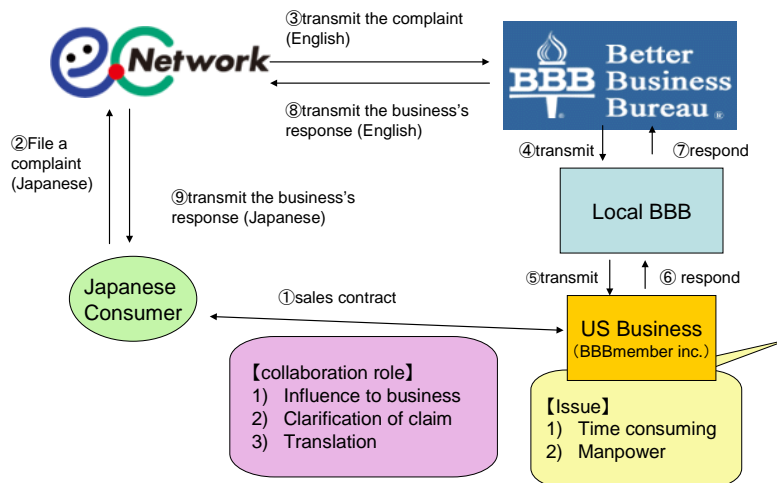


Figure 1-7-20 Bilateral cooperation between BBB and EC Network

As a matter of course, there are cases where the opposite occurs, and a US consumer encounters problems while shopping on the website of a Japanese business, but the number of these cases is relatively small. When Japanese consumers deal with US businesses, they can order goods or services with fewer language problems. However, when those consumers encounter problems, they very often encounter difficulties in lodging complaints or negotiating with foreign businesses in English. They often fall into more complicated situations because they can not successfully convey their complaints via phone or e-mail. In this regard, the presence of a third-party organization has great significance for Japanese consumers so that they can communicate in their own native language.

Another important aspect of this bilateral collaboration is that the details of the consumer complaints can be accurately forwarded to the business by mediating between the two parties. The role of the complaint handling organization is not only interpretation. The complaint handling organization as a neutral third-party can organize the key points of the complaints by eliminating emotional expressions, etc.

The other point of significance is BBB's clout over US businesses. EC Network is not well-known amongst them, and there is a possibility to be

regarded as a "less important" entity to deal with, or they might feel no obligation to respond to inquiries from EC Network. However, leaving an unpleasant record with a famous organization such as BBB could be a major blow for their businesses. Irrespective of membership in the organization, BBB has compiled a database of consumer complaints against businesses and the business' responses to those complaints, and BBB has released this information in its "Reliability Report" to the public⁵⁷. Even if the business is not a BBB member, it generally is willing to respond sincerely to a complaint. This is the reason why the collaboration with BBB helped solve complaints from Japanese consumers. Thus, the aforementioned bilateral cooperation on complaint handling could be considered as the initial stages for an actual ADR process. The more influence that ADR service providers have in their own countries, the better global collaboration will function.

EC Network also signed a complaint handling partnership agreement with Secure Online Shopping Association⁵⁸ (SOSA) in Taiwan. Both have not yet handled any complaints involving businesses in Taiwan and Japan.

ii) Toward multilateral cooperation

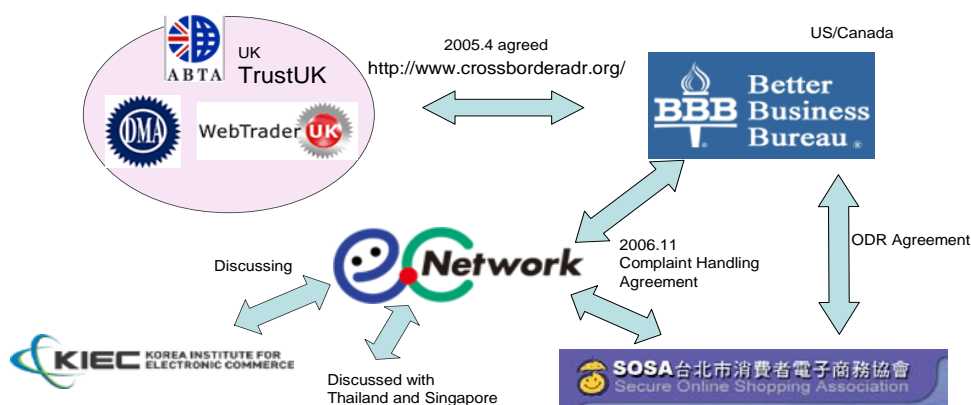


Figure 1-7-21 The current status of complaint handling networks

⁵⁷ Refer to 2.1 BBB Online

⁵⁸ <http://www.sosa.org.tw/index.asp> (Taiwanese)

As the data collected by EC Network in the previous chapter shows, the number of cross-border complaints received is over one hundred per year. However, complaint handling organizations may face difficulties to provide support if the number of cross-border complaints or disputes increases with the growth of e-commerce business in the ASEAN and East Asian regions. A complaint handling collaboration project that utilizes an Online Dispute Resolution (ODR) Platform between the BBB and TrustUK⁵⁹ was created to promptly and effectively handle complaints lodged against businesses located in North America and England. The email-exchange method used in the bilateral collaboration between BBB and EC Network had a disadvantage in terms of protection and confidentiality of information because the data of complaints may be passed around and stored in several areas. The ODR system, which enables consolidation of information on a single server, may help eliminate concerns about security and may make the best use of the system as a valuable database. We will discuss ODR in chapter 3.3.

Considering multilateral cooperation on complaint handling, these organizations need to work with law enforcement organizations or the police in regard to fraud or unscrupulous businesses. However, one of the findings of the bilateral cooperation between BBB and EC Network is that cross-border complaints can be settled in cases where consumers encounter language problems or have misunderstandings with businesses in another country. To promote and foster a reliable and secure e-commerce environment in ASEAN countries and East Asia, we believe this bilateral partnership should be extended, and we should consider an effective and efficient multilateral complaint handling scheme in the near future.

As it is sometimes difficult to predict how these laws are applied to individual cases, but the Ministry of Economy, Trade and Industry provides interpretations regarding the application of these laws to various legal issues related to e-commerce in the "Interpretative Guidelines on Electronic Commerce and Information Property Transactions"⁶⁰.

Private groups have also been developing their own guidelines regarding e-commerce, such as: the (i) Consumer Protection Guidelines of

⁵⁹ TrustUK stopped its operations in 2007.

⁶⁰ http://www.meti.go.jp/english/information/data/IT-policy/interpretative_guidelines_on_ec070628.pdf

E-commerce, by the Electronic Commerce Promotion Council of Japan (1998); (ii) E-Commerce Guidelines, by Japan Direct Marketing Association (1999), and; (iii) Guide for EC Sellers /Guide for Auction Users, by EC Network (2006).

1.8. Efforts of Consumers International

(1) Brief description of Consumers International

Consumers International (CI) is the world federation of consumer groups that, 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. Founded in 1960, this modern movement is essential to secure a fair, safe and sustainable future for consumers in a global marketplace increasingly dominated by international corporations. CI is a not-for-profit company limited by guarantee, a registered charity in the UK, a founding signatory of the International NGO Accountability Charter and is fully committed to its principles of legitimacy, transparency and accountability.

CI has offices located in London (UK), Santiago (Chile), and Kuala Lumpur (Malaysia), as well as staff based in Abuja (Nigeria) and Johannesburg (South Africa). CI has access to international institutions and negotiations through its accreditation with UN bodies, including the World Health Organization, Food and Agriculture Organization of the United Nations and World Health Organization (FAO/WHO) Codex Alimentarius Commission, United Nations (UN) Commission on Sustainable Development, UN Conference on Trade and Development (UNCTAD) and the International Organization for Standardization (ISO).

(2) CI's concerns on consumer issues with e-commerce

Consumers International's primary concerns have always been to ensure that businesses observe the principles of truth and credibility in advertising and full disclosure when in the process of making their offerings and completing transactions. The main concerns of consumer advocates are that the same levels of protection and mechanisms for protection of consumer interests that exist in the real marketplace should also be provided in the virtual marketplace, as consumers now face and continue to face breaches of

data security, identity theft, cyber fraud and the problem of malicious software. Doing business over the internet without prior dealings with, or knowledge of, retailer credibility adds another issue to the range of matters consumers have to consider when dealing with businesses. Security measures like authentication, confidentiality, integrity and non-repudiation are the areas where businesses need to assure consumers.

In addition to fully understanding the price on offer, the description of the product, and after-sales service, the internet raises the issue of personal information and privacy that is collected by the business on the consumer. Disclosure of private matters, such as consumers' names, addresses, ages, occupations and others to third parties, is another issue of concern. The ability to extract and manipulate data on consumers' purchasing or browsing behavior, through what is termed 'behavioral targeting' has given rise to a new dimension in what can be termed 'personal data'.

At the outset of electronic commerce, a number of issues arose in which clarification had to be made as to the responsibilities of traders and consumers. Accordingly, in some jurisdictions, rules were put in place through statutory regulation, and legitimate traders also accepted certain conventions that should be adhered to in order to build goodwill and trust, and differentiate themselves from the more suspect traders that lurk on the web.

(3) Global initiatives in the past

At the beginning of this decade, the Committee on Consumer Policy of the Organisation for Economic Cooperation and Development (OECD) undertook an initiative to examine the challenges posed by the evolving online environment and to establish a safe and predictable global marketplace for consumers. Eventually, the Committee developed a set of general guidelines, known as the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce. The guidelines only represented a recommendation to governments, businesses, consumers, and their representatives as to the necessary elements of effective consumer protection in the context of electronic commerce. The privacy of personal consumer information was a major concern in the OECD guidelines.

At around the same time, a data protection and privacy project was organized by Consumers International (CI), which produced a

comprehensive report examining how much information was being collected from consumers when using the internet, whether for browsing, personal research or shopping. The report also examined how websites could take steps to protect the privacy of this information.⁶¹ An international project team comprising researchers from 14 consumer organizations⁶² around the world carried out the site assessments. The main findings of the study revealed that existing measures put in place by various governments to protect people's privacy are not adequate. The study clearly showed that many EU and US internet sites aimed at consumers fell woefully short of international standards on data protection.⁶³

In particular, the study found that over two third of sites collected some sort of personal information and almost all sites asked for details that made it easy to identify and contact the person. Furthermore, the vast majority of sites gave users no choice about being on the site's own mailing list or having their name passed on to affiliates or third parties. Of interest is that despite tight EU legislation, sites based within the EU are not that good at telling users how they use their data when compared to sites based in the US, where there was not comprehensive legal protection in the consumer privacy area. Since then, the OECD has produced further guidelines,⁶⁴ and more recently,⁶⁵ a report entitled *Shaping Policies for the Future of the Internet Economy* at the OECD Ministerial Meeting in Korea on the Future of the Internet Economy in June 2008. These initiatives have served a useful purpose in guiding stakeholders in the continuing evolution of electronic commerce.

⁶¹ A detailed report by CI was released on 25 January 2001 and a copy of the report can be obtained from the CI website at:
www.consumersinternational.org/Shared_ASP_Files/UploadedFiles/80732215-7329-4A22-A02A-9A8062C65BC7_Doc30.pdf

⁶² The project team included participants from consumer organizations in Australia, Belgium, Denmark, France, Holland, Hong Kong, Japan, Norway, Poland, Sweden, United Kingdom, and the United States.

⁶³ International standards on data protection refer to the Organisation for Economic Cooperation and Development's Privacy Guidelines and the European Data Protection Directive (95/46/EC).

⁶⁴ 2003 *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*, and the 2007 *OECD Recommendation on Consumer Dispute Resolution and Redress*

⁶⁵ <http://www.oecd.org/dataoecd/1/28/40821729.pdf>

However, the features that make the internet so attractive, for example its openness, anonymity and global reach, also expose its vulnerabilities. There is very little to preclude anyone in any country around the world from participating in using the internet for commerce. All that is required is a computer and a telecommunications connection – something that is within the reach of persons in developed or developing economies that have varying levels of regulatory scrutiny.

We are now faced with a situation where the issue of privacy covers a wide spectrum of issues. For example, at one end it can encompass clear breaches of privacy laws, such as theft of personal information for illegal purposes. At the other end, there is the manipulation of data on consumers' browsing behavior so as to provide identified consumers with targeted advertising, that on the face of it serves their needs. While the former is clearly illegal and stringent enforcement processes need to be applied, the latter is not. How privacy concerns are going to be addressed for the latter is largely a matter that will need to be controlled by consumers themselves.

The challenge that stakeholders such as consumers, industry, and regulatory bodies now face is how to keep pace with the evolution of electronic commerce, and how to meet the challenges posed in protecting personal information at both ends of the spectrum. One thing I have always found is that in dynamic and fast changing industries, such as electronic commerce, business people themselves are not sure in which direction the sector will take. It follows that if businesses are unsure of what direction to take, it is equally difficult for regulators and consumer advocates to second-guess what is going to happen. As a result we are largely left to:

- take a suspicious outlook by assuming the worst might happen;
- ensure that the means by which quick remedial action can be taken are readily available; and
- react to events as they emerge.

(4) Consumer confidence

The common overriding principle over the years has been the understanding that user confidence online is the key to the ongoing success of the internet. In other words, this theory infers that if confidence is not there, consumers will stop using the internet. While this can be accepted in general terms, and should continue to be a factor in guiding regulatory and

business activity, I think that consumers have now reached a position where confidence in using the internet is now assumed to be a right. For many consumers, using the internet is not a discretionary matter where substitutes are readily chosen or even considered as an alternative. This is to the extent where consumer demands for goods and services are now dependent on the internet, in particular for research purposes, which means that use of the internet is an integral part of purchasing goods and services.

As a result, I believe the lack of consumer confidence that will arise in the future, and the unrest or disruption that will occur, will be due to a loss of confidence in the organizations and agencies that consumers expect to be protecting their rights - not in the internet itself. The critical factor in addressing this concern is that all stakeholders, that is, regulatory agencies, consumer advocates, and legitimate businesses, should recognize the need for collaboration at both a domestic and international level.

Consumer advocates, such as the national consumer organizations at the domestic level, and Consumers International at the international level, have their roles. Similarly there is a role for other non-government bodies, government funded consumer law enforcement bodies, and industry bodies. It is only through maintaining strong partnerships between the various stakeholders, and communicating the initiatives that are being taken to maintain levels of protection, that confidence will be maintained at a pace that matches the speed at which the industry is developing.

(5) Cooperation at the international level

Government consumer law enforcement agencies, in the process of addressing electronic commerce problems that arise such as spamming and internet fraud, have undertaken some initiatives that can also be used to address the infringement of consumer privacy rights. For example, the International Consumer Protection and Enforcement Network (ICPEN) formerly known as the International Marketing Supervision Network (IMSN)⁶⁶, which consists of consumer law enforcement agencies of more than 24 countries, conducts “Sweep Days” to target the growing number of fraudulent and deceptive scams emerging on the internet. Sweep Day participants surf the internet to identify potentially deceptive or fraudulent sites. The sites identified are then subjected to whatever remedial attention is

⁶⁶ <http://www.icpen.org/>

appropriate and applicable.

At another level, an international spam enforcement workshop organized in 2004, attended by enforcement agencies and a wide range of industry experts including consumer advocacy bodies, resulted in what is known as the 'London Action Plan' (LAP).⁶⁷ The objective of the LAP is to promote international spam enforcement cooperation amongst a wider spectrum of stakeholders than just enforcement agencies to address spam-related problems such as online fraud and deception, "phishing", and dissemination of viruses. The LAP aims to be a fast-moving, flexible international network dedicated to addressing spam-related concerns on the internet. The LAP relies on a number of agreed principles such as designating contact points between participants for communication and coordination, taking part in periodic conferences to exchange information on cases, and discussing law enforcement developments and techniques. While the current activities of ICPEN and the LAP are focused mainly on fraud and deception over the internet, the basic framework exists for these initiatives to also address the infringement of consumer privacy rights. At a basic level, for example, laws prohibiting misleading and deceptive conduct in trade or commerce can also be applied to misleading or deceptive conduct by internet based businesses when stating their privacy policies.

On a government-to-government basis, two relevant international initiatives can be noted. First, in Asia, the APEC Privacy Framework⁶⁸ provides guidance and direction to businesses in APEC Member Economies on common privacy issues, and outlines reasonable consumer expectations on how privacy interests should be protected through general principles. For example, there are principles to prevent harm to consumers' rights, maintain integrity of personal information, provide adequate notification of privacy policies, and to provide limitations on the access, collection and correction of information.

While the APEC Privacy Framework only provides a general outline of principles for member countries to follow, the Council of Europe has promulgated an international treaty entitled the 'Convention on Cybercrime'.⁶⁹ This is the only binding international treaty on the subject of

⁶⁷ <http://www.londonactionplan.org/>

⁶⁸ http://www.apec.org/apec/news_media/fact_sheets/apec_privacy_framework.html

⁶⁹ http://www.coe.int/t/dc/files/themes/cybercrime/default_en.asp

Cybercrime to date, and while not widely subscribed to, it does include the US as a signatory.⁷⁰ The main aim of the Convention is to pursue a common criminal policy aimed at the protection of society against Cybercrime, amongst other things, by adopting appropriate legislation and fostering international co-operation. The Convention includes a list of crimes that each signatory state must transpose into their own law. As far as privacy issues are concerned, the Convention requires the criminalization of such activities as hacking (including the production, sale, or distribution of hacking tools).

(6) Industry initiatives

Leaving aside the regulatory initiatives noted above, there are industry initiatives such as those offered by the TRUSTe certification organization,⁷¹ which require certain standards of protection for consumer privacy as a condition for granting a ‘seal of approval’ to websites. In these circumstances, consumers are able to use the existence of these trust seals to decide whether they should use particular websites.

These initiatives offer an element of competition, in that the standards that are applied can vary between different organizations, and consumers are then able to decide which organization’s trust seal is better suited to their needs. For example, certain seals may be more appropriate to suit those persons who are concerned about non-illegal conduct such as behavioral targeting.

In March 2008, TRUSTe announced the results of a study regarding American internet users’ knowledge, attitudes and concerns about behavioral targeting and its implications on their online privacy.⁷² Overall results indicated a high level of awareness that internet activities are being tracked for purposes of targeting advertising (71 per cent claimed to be aware of the practice) and a high level of concern associated with that tracking (57 per cent stated they were not comfortable with the practice).

An overwhelming majority (91 percent) of respondents expressed a willingness to take the necessary steps to assure increased privacy online when presented with the tools to control their internet tracking and advertising experience. This suggested a need for added education, transparency and choices for behavioral targeting. A strong market demand

⁷⁰ <http://w3.bsa.org/eupolicy/press/newsreleases/Cybercrime-Convention.cfm>

⁷¹ <http://www.truste.org/>

⁷² http://www.truste.org/about/press_release/03_26_08.php

can therefore be seen to exist for industry to produce the necessary software tools that will enable consumers to decide how much of their personal information they are willing to share with website operators.

(7) Business obligations

Legitimate businesses will continue to post their privacy notices on their websites and adhere to the stated policies, in addition to regulatory requirements. Moreover, the need to preserve corporate goodwill can still be relied on as a general safeguard for consumers when they deal with reputable companies, in the event of any breakdown in the privacy safeguards that are claimed to exist. For example, in July 2004, Cosmo Oil of Japan gave credit card points worth ¥500 (around US\$4.5) to 923,000 customers whose personal data was leaked by the company in April. The points were redeemable at Cosmo Oil gas stations across Japan.

Mistakes or inadvertent breaches of privacy policies are bound to happen, and examples continue to appear in news stories around the world. Responses of the kind demonstrated in Japan should be encouraged, and should go some way in restoring consumers' faith in business.

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

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.

(9) CI and ICA Net

In the global marketplace, cross-border transactions are increasing rapidly. Due to this, the number of disputes/complaints is increasing accordingly. Twenty percent of registered disputes/complaints are cross-border cases. Geographical boundaries, language, legal procedures, commercial practices have stood as barriers for handling cross-border disputes/complaints. The first business steering committee (BSC) of GBDe approved the formation of the Consumer Confidence Issue Group to provide recommendations on Trustmark, ADR and Privacy Data Protection activity. On invitation, CI participated in the Consumer Confidence Issue Group Meeting (CCIG) of GBDe held on 25 June 2008 at Taipei, Taiwan. During this meeting, CI 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.

Following this, CI facilitated CCIG in promoting the implementation of ICA-Net through initial discussions with government and consumer organizations in Malaysia. CI is happy to see the progressive approach being adopted by CCIG in implementing ICA-Net in the ASEAN/APEC regions and thereafter to connect the net with ECC-Net in Europe. CI would provide its cooperation in initiating meaningful discussions with CI members 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. With this collaboration, CI hopes to strengthen country legislation in cross-border transactions, while emphasizing the role of consumer organizations in consumer protection measures through:

- Capacity building and training;
- Complaint handling and facilitation services;
- Database management; and
- Influencing public policy.

As shared at the CCIG meeting in Taiwan and the subsequent Annual Summit of GBDe in San Francisco in 2008, 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, or access the worldwide number for any other purpose. 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 of the opinion that ICA-Net should start working towards the creation of an online forum for holding discussions and posting information on electronic transactions. Similarly, CI would advocate for the appointment of 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.

(10) Scope for ICA Net in ASEAN and East Asia

There is much scope for ICA-Net in Asia as bridging the digital divide is a crucial, global issue, since those who are left behind risk losing out on the wealth creation that drives today's economy. Furthermore, ICA-Net will help create the internet-based "knowledge network" that will allow government officials, non-profit groups, academics, and others to obtain updated information on digital divide projects around the world.

The creation of an ADR process is possible in the region through the initiation of ICA-Net. There is scope for increasing cyber security through development of the Information Society. The private sector needs to offer electronic commerce services in a secure manner. Likewise, governments should provide the minimum necessary legal framework, such as ensuring equivalency between electronic authentication and traditional hand-written signatures and personal seals, and provide legal mechanisms to guard against misuse.

It is critical to promote international networking between and within the private and public sectors to avoid controversial policies and to establish a stable, but flexible framework. Such a framework should be technologically neutral, and should recognize the validity of contracts from region to region or nation to nation.

CI is also of the view that businesses providing online services must be recognized with appropriate international standards, like those provided by the International Organization for Standardization (ISO), under which businesses would need to adhere to certain schemes such as having:

- recognizable certification (by a neutral independent Board (consumers, business and government) appointed in a transparent and competent manner;
- credit card charge backs;
- an online dispute resolution (ODR) system (to be periodically reviewed using CI GBDe joint guidelines); and
- a mechanism to publish results of complaint cases resolved.

(11) Consumer self-help

Notwithstanding the best efforts by regulatory bodies through enforcement of laws, the application of corporate goodwill, and industry self regulatory responses through trust schemes, consumers themselves can and should also take their own self-help actions. There are a number of steps that can be taken, that are by and large recommended by consumer organizations or consumer privacy advocates, such as Privacy Rights Clearinghouse.⁷³

By way of summarizing my presentation, and emphasizing that in the end, consumers themselves have a vital role to play, and an obligation to help themselves in protecting their privacy, the steps are:

- Consider using different browsers that provide forms of control over how much information is kept and stored, change the settings to restrict the application of cookies, and update the browsers with appropriate security patches.
- Be aware of the security certificates that exist in the marketplace and check to make sure any certification displayed on a website is up to date.
- Make use of reputable firewalls, anti-virus programs, anti-spyware programs and encryption programs, or browsing programs that offer anonymity.
- Last, but not least, consumers should actually read privacy policies that are displayed on a website, as they can and do vary. Understanding what the policies actually say can avoid the sort of privacy concerns that many consumers raise.

(12) Annexure 1: CI's Comments on ICA-Net

In addressing cross-border ADR, CI is of the opinion that the following

⁷³ http://www.privacyrights.org/about_us.htm#funders

measures can strengthen the ICA-Net:

i) Improved country legislation:

On par with off-line transactions, respective governments should formulate new laws for e-commerce. 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, CI agrees with the recommendations of GBDe on ICA-Net. They aim to encourage:

- 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.

ii) Cross border transactions:

As cited in the framework, an urgent consideration should be given to the issue of 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.

iii) Role of consumer organizations:

CI is of the opinion that consumer organizations play a very important role in ICA-NET as CALOs for the following activities:

- Capacity building and training: Consumers International 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.
- Complaints handling and facilitation services: other important activities are complaint handling & facilitation services. Consumer organizations will handle both in-country as well as cross-country complains from consumers for e-commerce transactions. As facilitators, they will be providing advisory, campaigning, lobbying, advocating, and representation roles.
- Database management: Consumer organizations will be involved in database management claims, complaints, and information and communication services.
- 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.

iv) Worldwide toll-free number and consumer access:

A worldwide toll-free international access number would help consumers to have access from any place. This would in turn help them to register a complaint or use the service for any other purpose.

v) 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 conducting e-transactions. Similarly, ICT will be a useful means for disclosure of information on a complaint settlement to a third party

vi) Online forum:

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

vii) 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.

viii) Continued financial support:

The ICA network must be able to financially sustain itself through the support of government and industry

2. Leading cases of international cooperation for consumer disputes on e-commerce

In this chapter, the activities in the US and EU are respectively introduced as leading examples of international cooperation for building trust and handling complaints, based on the presentations made in the first workshop.

2.1. BBB Online

Mr. Charles I. Underhill of BBB Online joined the first ERIA Working Group as a guest speaker on December 17-19. He kindly made a speech about the activities of BBB OnLine since the start of the Trustmark program, and about its ground-breaking efforts to enhance consumer confidence in e-commerce in North America. As a leading and practical example of international cooperation for complaint handling and disputes, his views and achievements to build trust were invaluable for the first Working Group. Appearing below is his presentation without modification, which ERIA obtained permission to post from Mr. Underhill.

* * * * *

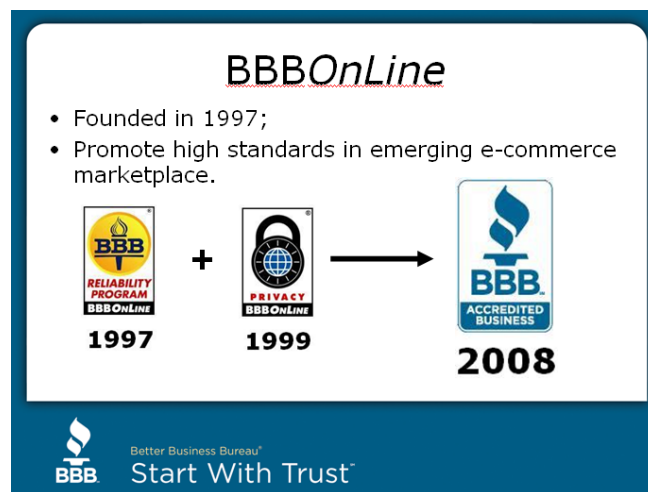
Thank you. It is a great honor to have been asked to present at this important ERIA working group workshop on the establishment of a secure and safe e-commerce marketplace. I hope we will be able to make some small contribution to your work here today.

Let me begin by providing you with some quick background information on the organization I represent, the Better Business Bureau, or “BBB” for short.

Founded in 1912, BBB is a non-profit, North American organization that sets and upholds high standards for fair and honest business behavior. Businesses that earn BBB accreditation contractually agree and adhere to the organization’s high standards of ethical business behavior. BBB provides

objective advice, free business BBB Reliability Reports™ and charity BBB Wise Giving Reports™, and educational information on topics affecting marketplace trust. To further promote trust, BBB also offers complaint and dispute resolution support for consumers and businesses when there is a difference in viewpoints. Today, 125 BBBs serve communities across the U.S. and Canada, evaluating and monitoring nearly 4 million local and national businesses and charities.

Several of you may recall that in 1997, the BBB founded a program called *BBBOnLine*, designed to promote high standards of business practice in the emerging world of e-commerce. The *BBBOnLine* Reliability program grew from a fledgling few BBB “trustmark” seal holders in 1998 – added a Privacy seal in 1999 – and stood at around 29,000 Reliability and Privacy seal holders in 2005, when I last spoke to the GBDe and GTA meetings in Brussels. In partnership with GBDe, and a group of European and Asian organizations, BBB helped encourage the formation of both the Global Trustmark Alliance and the ATA, and entered into a number of pilot dispute resolution agreements with organizations in Asia and Europe.



Today, BBB has over 47,000 online trustmark seal holders, and is in the process of consolidating its seals into one powerful online and offline BBB trustmark for all BBB Accredited Businesses. More on that in a few minutes.

My colleagues from EC Network have done an excellent job of explaining the “what” – what we are all doing to build the reliability of e-commerce in cross-border transactions. I’d like to use my remarks to remind us all of the

“why” – why we are doing this – and why it may have gotten considerably harder.

There is an often-quoted saying in English, one that is said to have its origins as an ancient Chinese curse: “May you live in interesting times”. This was supposed to be the first of three curses of increasing severity, the other two being: “May you come to the attention of those in authority” and “May you find what you are looking for”. Although I have searched fairly thoroughly online, I cannot find any reference to an original Chinese source for this, making its exact origin doubtful.

But cursed or not, we certainly are now living in interesting times – and very difficult – times. The financial earthquake warning detectors went off as the U.S. sub-prime mortgage market began to collapse in early 2008, and alarm bells began ringing in financial capitals throughout the interconnected global financial markets.

However, the financial earth started truly shaking during the week of September 7th in the U.S.

We quickly learned how sub-prime mortgages, granted to people in the U.S. who could not afford them were packaged as securities and sold to other financial firms, who then repackaged them and sold them to other financial institutions (sometimes multiple times), where they ended up in some other part of the world – perhaps in a Norwegian village pension fund or a police retirement fund in Wales.

In the space of roughly 90 days, we’ve had weekly doses of new bad news, weekly lists of corporations we once thought stable now threatened and we’ve seen, by one estimate, 50 trillion in global wealth simply vanish.

So my message today will start with a strong warning and end – I hope – on an optimistic note.

First, the warning.

It is hard to talk about “establishing a safe and secure e-commerce marketplace” without recognizing the impact that this past year – and what we may still have to face in the coming weeks and months – will have on e-commerce.

For a financial system to work, whether it is within a small town, or a country or in a global marketplace, individual investors and then increasingly larger and larger institutions have to be able to have trust in one another – trust that everyone will behave with integrity, that rules and safeguards are in

place and being monitored, that there is sufficient transparency to ensure that everyone can see that the rules are being followed, that those who breach the rules are sanctioned and most important of all, that rule breakers are the exception.

The past 90 days seem to be teaching us the lessons that – in too many of our global institutions and under too many circumstances – the opposite has been true.

In 2005, New York Times correspondent Thomas L. Friedman published his book *The World is Flat*. Updated in 2006 and again in 2007, the book makes important points about partnerships and relationships in the new global “flat” economy. With regard to these critical relationships, Friedman notes:

“ Without trust, there is no open society, because there are not enough police to patrol every opening in an open society. Without trust, there can also be no flat world, because it is trust that allows us to take down walls, remove barriers, and eliminate friction at borders. Trust is essential for a flat world . . . ”

Steven M. R. Covey, author of the 2006 book, *The Speed of Trust*, makes a number of compelling points. Like Tom Friedman, he believes that trust is the key ingredient for the global economy. His essential point is this:

- When TRUST is high, speed goes up and costs go down.
- When TRUST is low, speed goes down and costs go up.

Here is a brief person example. At the end of May in 2001, I was invited to give a presentation on consumer dispute resolution for the U.S. State Department in Paris and Rome. I arrived at the Dulles airport in Washington about an hour before my flight and breezed through security. The same thing happened between Paris and Rome and between Rome and Washington.

Then we had the tragedy of September 11th in New York and Washington.

In early December, a little more than 2 months after the terrorist attack, I was invited to speak to the Italian Chambers of Commerce in Rome. I had to arrive at Dulles airport nearly 4 hours early. The security lines were much longer, no one really knew what they were doing, so they were almost (but not quite) checking every piece of carry on luggage by hand, which would have made for an impossible situation, except that so many people had lost faith in flying that many flights were going with half empty planes.

The difference? Before September 11th, trust was high, speed was high and costs were lower. After September 11th, trust was low, speed was slow and costs were much higher.

Covey cites two writers who both speak to this, one an American poet, Ralph Waldo Emerson; the other, a British author, G. K. Chesterton. Here's what they said:

Our distrust is very expensive.

Ralph Waldo Emerson

When you break the big laws, you do not get liberty; you do not even get anarchy. You get the small laws.

G. K. Chesterton

For more than a decade, advocates of cross-border e-commerce have worked to try and ensure that governments recognized the importance of keeping the artificial administrative and regulatory barriers as low as possible to encourage the growth of this amazing and empowering new medium for commerce. But as TRUST breaks down, as big organizations get caught breaking big rules with impunity, it is very possible that we will indeed get Chesterton's small laws – tens of thousands of them – that will have the effect of adding up to a collective strangle lock on all commerce, including e-commerce. That is, unless we work well and thoughtfully together, as we have so often done in the past, to find creative ways to collaborate – governments, NGOs and the private sector.

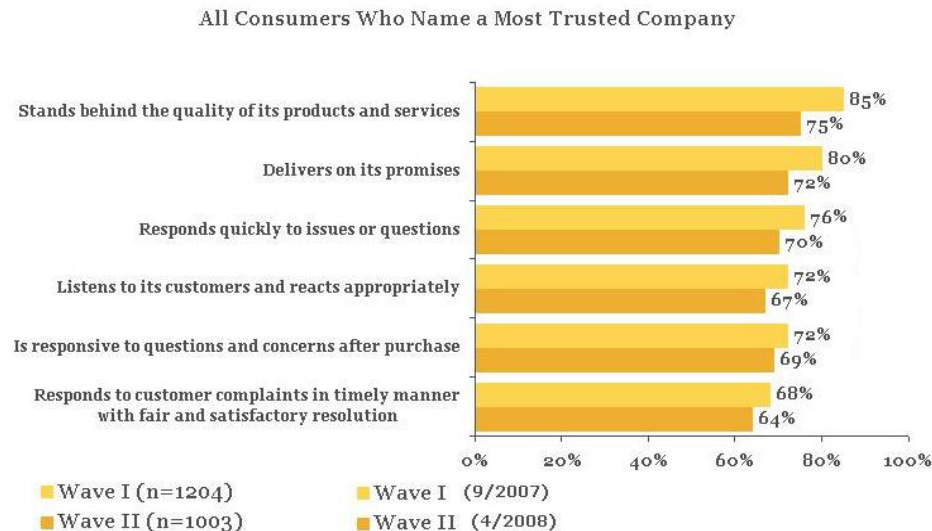
When we are talking about cross-border commerce, whether it is trillions of dollars in the global financial markets or the potentially large volume of much smaller amounts in cross-border consumer e-commerce transactions, in the end, it all boils down to TRUST.

And when TRUST plunges, as I believe it is now doing, our ability to encourage cross border e-commerce – where buyers and sellers are in different countries, and often do not know one another, even by reputation – the great benefits of e-commerce that we have worked so hard to promote are in jeopardy. Let me cite some examples.

In the Fall of 2007, and again in the Spring of 2008, the BBB in cooperation with the Gallup organization, conducted two surveys of American consumers. Over 1,000 consumers were surveyed. The spring '08 survey measured deviations from '07 baseline. Our purpose was to learn how consumers define trust, determine how trust impacts consumer

decisions to become customers, and identify emerging needs and actions that businesses can use to address consumers' concerns. The complete study is available on our web site⁷⁴.

Here are some of the top line results⁷⁵.



Currently, seven in ten or more of the consumers surveyed for the April 2008 survey strongly agreed that the company they trusted the most;

- Stands behind the quality of its products and services (75%)
- Delivers on its promises (72%)
- Responds quickly to customers' issues and questions (70%)

but notice that the three following responses are all variations of this theme – consumer complaint handling in one form or another.

Over the six-month period – September 2007 to April 2008 – the amount of trust Americans had in the businesses they deal with everyday – including 15 selected industry groups – declined on average by 14%. Declines took place in 13 of the 15 industry groups surveyed:

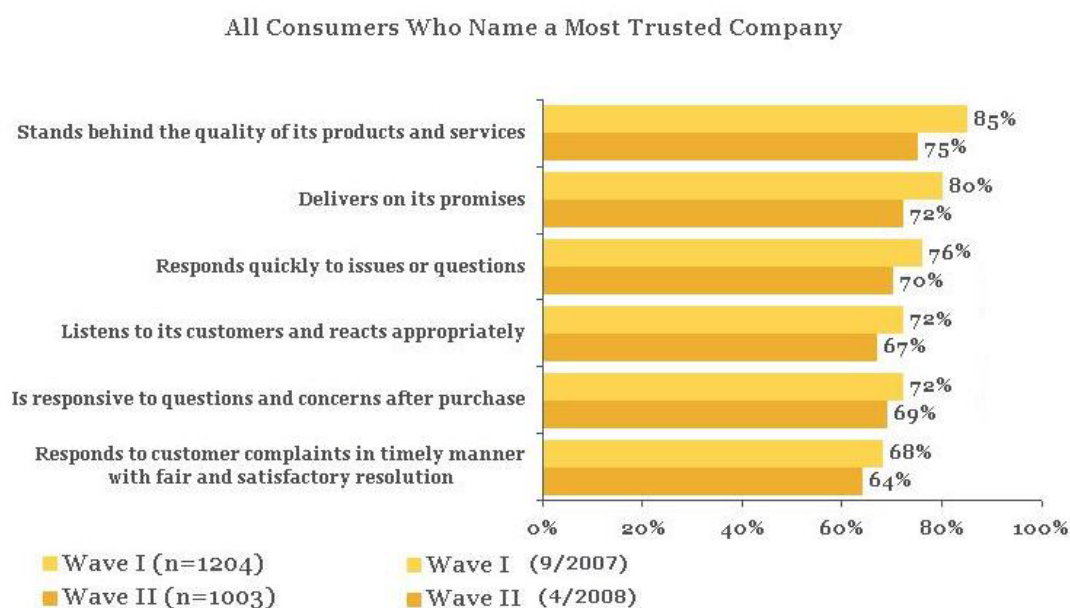
- The largest declines in TRUST of 19% were experienced by real estate brokers and auto dealers;
- Double-digit declines in TRUST also took place in department stores (16%), gas stations (15%), furniture stores (14%), banks (12%), home improvement stores (11%), auto repair shops (11%), and contractors (11%), and:

⁷⁵ Source: BBB/Gallup Trust in Business Index, September, 2007 and April, 2008.

- Declines in TRUST also took place in drug stores (9%), grocery stores (7%), office supply companies (3%), and electronics and appliance stores (3%).

- TRUST was unchanged among health care insurers and increased in cell phone and wireless service providers.

The study is rich in detail, which I won't go into here. However, Gallup did ask one final question which may be of interest to trustmark organizations like the BBB and those in ATA: We asked whether it would increase TRUST in companies consumers do business with every day if companies allowed credible third parties to assess their performance and if government became more actively involved in regulating company performance. At the time of the survey, 86% of respondents thought it would be very or somewhat helpful to have credible third party assessment, while only 58% felt similarly about government involvement.



These results were based on telephone surveys of 1003 adults taken between March 26th and April 20th, 2008 and publicly released on August 25th. So, the results reflect American's opinions about businesses they regularly dealt with after the housing market had begun to crumble and after oil prices had reached record levels per barrel – but before the financial markets began to collapse in September. The next BBB Trust in Business

survey will take place in March/April of 2009 and will reflect views of TRUST after the melt down. I expect it will be sobering, with much different results in certain key areas.

So, here are a few key points for what is going to follow:

- TRUST is a key ingredient for every business transaction;
- Even before the financial markets began to collapse in September, we have evidence that – at least in the United States – consumer TRUST in business – EVEN BUSINESSES THAT CONSUMERS REGULARLY DID BUSINESS WITH EVERY DAY – was declining.
- TRUST is adversely affected by distance – the world may be flat, but the less I know you, the less I know about your business, the harder it will be for me to TRUST.
- Businesses have more resources through which to learn about other businesses; consumers have fewer resources and therefore have more need – but less reason – to TRUST.
- As we have all said for nearly 15 years, the success of cross-border e-commerce will depend on finding ways to build – and maintain – trust over time. And the challenge of doing so just got appreciably harder over the last 90 days.

Let's turn to what problems merchants and consumers have with cross-border e-commerce. We have some ideas – from merchants, through a survey we did in 2004 of over 1,000 BBBOnLine merchants in the United States and Canada and, from consumers, in the complaints they file online.

Here are some key highlights from the 2004 survey of BBBOnLine U.S.-based merchants⁷⁶:

- 46% of the respondents used their web site to engage in e-commerce; the balance (53.8%) used their site as an information or advertising portal to bring business to their fixed place of business;
- Of those who sold online, over 80% accepted either credit cards or PayPal (or both) as their method of payment;
- Of those who sold online, nearly 80% used either U.S. postal service, FedEx or UPS to ship;

⁷⁶ E-Export Survey of BBBOnLine Participants, April 2004, Section A, United States Participants, ©Council of Better Business Bureaus, Inc.

- 41% indicated that they sold to customers outside the U.S. or Canada, but of that 41%, 77% indicated that those sales amounted to 10% or less of their total business;

When asked to describe barriers to e-commerce, BBBOnLine participants most frequently cited three major concerns:

- payment fraud,
- shipping problems and high costs
- and extra paperwork for customs.

In detailed narrative responses, businesses repeatedly note that customs requirements are designed for large producers shipping big products (like oil rigs) and not company shipping a small, single consumer product across borders. As one merchant put it:

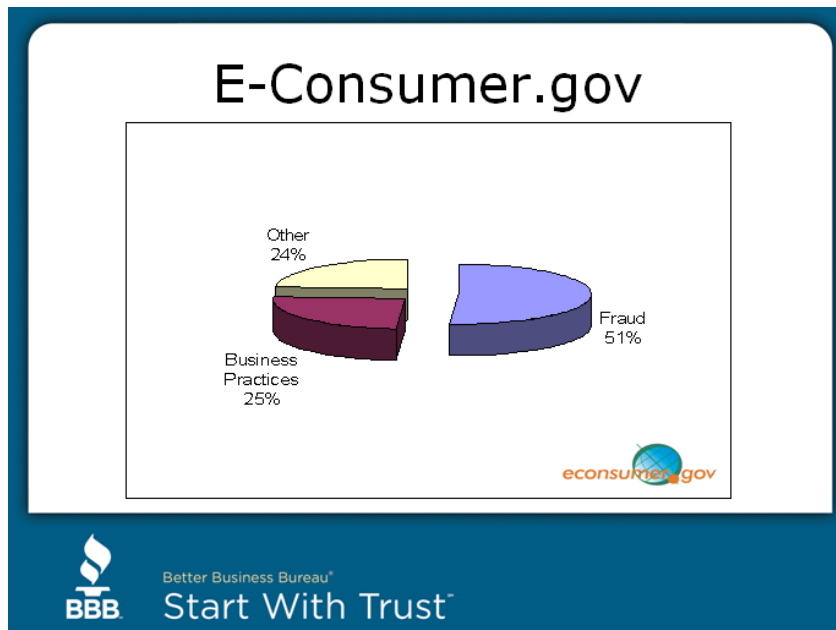
“Our average order contains about 20 different products that we source from many different countries. We are required to list the country of origin for each item. It can easily take 30 minutes to fill out the paperwork for a \$20 order”.

Let me turn to the consumer arena and give you some statistics from three sources: e-consumer.gov (administered on behalf of the International Consumer Protection and Enforcement Network) by the U.S. Federal Trade Commission; The recent joint cross-border complaint experiment BBB undertook in cooperation with TrustUK/WebtraderUK and the Direct Marketing Association in the UK. And finally, BBBs own cross-border complaint handling.

I asked the FTC for its most recent 6 months of complaint data for e-consumer.gov. This covers the period from January – June of 2008 and represents over 8,400 consumer complaints and over 11,000 consumer law violations reported by the ICPEN member states. This first chart shows the econsumer.gov breakdown of complaints into 11 major categories.

In the next slide, for the sake of simplicity, I have combined certain categories into three basic ones: complaints that are fairly clearly dealing with fraud, those that are more likely “business practices” and those that econsumer.gov classified as “other” and are, therefore, “unknown”⁷⁷.

⁷⁷ U.S. Federal Trade Commission, for econsumer.gov. First half 2007 statistics are available online



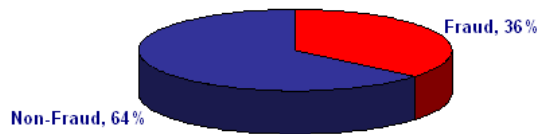
Next, I'm going to turn to the report we presented to the GBDe meeting in 2005 in Brussels, regarding the cross-border complaint handling agreement between TrustUK/WebtraderUK (administered by the DMA-UK) and the BBB.

There were several slides we used in that presentation, but the most important were these two:

- Of all the complaints exchanged between the two organizations, 36% involved some form of fraud.

BBB/TrustUK Agreement

Fraud – 36% of Total



- Average Value of All Cases – 963.04 USD
- Average Value of Fraud Cases – 1,357 USD
- Average Value of Auction Fraud Cases – 1,538 USD

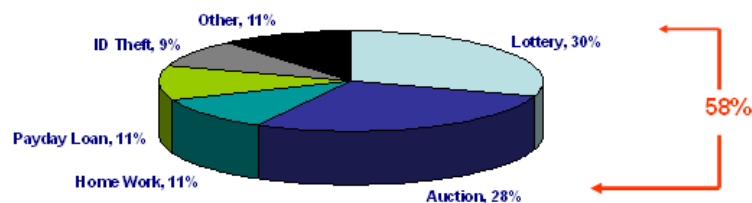


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- Looking deeper at the fraud, 58% involved either “lottery” fraud (30%) or “online auction” fraud (28%), and another 9% directly involving some form of identity theft. It is probably fair to say that identity fraud would eventually show up in the “lottery” or “auction” fraud at some point in the future.

BBB/TrustUK Agreement

Fraud – Type of Fraud¹



¹ 54 total fraud complaints



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Finally, let me turn to the 2007 annual statistics for the BBB. During that year, the BBB handled nearly 830,000 written complaints filed by consumers in the U.S. and Canada, plus the U.S. BBB system handled another nearly 30,000 auto warranty disputes through a special mediation and arbitration program called BBB AUTO LINE. Finally, the BBB provided nearly 55 million reports on companies to consumers before those consumer did business.

Although the year hasn't ended yet, I asked our technical staff to give me a report of 2008 complaints closed from January 1 through November 30th, where the consumer lived outside the United States OR Canada and was filing a complaint against a business located in the United States. That number turned out to be 915 consumers, a very tiny slice of what we estimate will be many more than 830,000 consumers this year, but probably more than 1,000 by the end of 2008.

Where do these consumers come from? Well here are the top 10 countries, and how they stack up against the top 10 from econsumer.gov (since, I've eliminated the U.S. and Canada as sources of complaints on our list, so I'm only showing the "top 8" from econsumer.gov):

Consumer Country	# Complaints	ConsumerCountry ⁷⁸	# Complaints
United Kingdom	206	Australia	206
Australia	128	United Kingdom	128
Germany	40	India	38
Mexico	38	France	34
India	34	Germany	32
France	32	New Zealand	27
The Netherlands	27	Spain	26
Switzerland	26	Ireland	25
Japan	25		
Singapore	25		

Grouped by region, 51% of the complaints are coming from Europe, 18%

⁷⁸ United States and Canada omitted from the FTC/eConsumer.gov statistics for comparative purposes with BBB statistics (which excluded U.S. and Canada for this report).

from the Asia/Southasia/Pacific region, 16% from the Australia/New Zealand region, 10% from the Americas (excluding the U.S. and Canada) and 5% from the Middle East and Africa.

As I turn now to a comparison of settlements, we were able to settle 58% of all the cases we received from overseas consumers, with 36 percent unsettled and 6 percent categorized as “unpursuable”, which probably wouldn’t be considered too bad a record, unless it is compared with our record for resolving cases filed by U.S. and Canadian consumers, where our settlement rate goes up from 58% to a much more respectable 73%.

Here, too, I’m afraid that the difference in these settlement rates – in fact the difference between the settlement rates of the best companies and the 58% settlement rate in the cross-border setting – is likely that there is just more outright fraud, misrepresentation and the opportunity to take advantage of customers in this cross border environment.

So, it is time to bring this all to some sort of a conclusion. And I’m afraid that some of this is not very good news. In summary, here’s those 5 key points again:

- TRUST is a key ingredient for every business transaction;
- Consumer TRUST in business was declining BEFORE 9/08;
- TRUST is adversely affected by distance;
- Consumers have more need – but less reason – to TRUST in a global market;
- Success of cross-border e-commerce depends on building and maintaining trust over time – and the aftermath of 9/2008 is making that more difficult.

If you look at the information that I presented from econsumer.gov and from the results of our cross-border experiment between BBB and TrustUK, we should all be concerned about the implications for cross-border e-commerce.

Based on the econsumer.gov statistics, if you were a venture capitalist and I came to you with a business plan where 51% of all transactions resulted in some sort of fraud, would you back the venture? And while my BBB/TrustUK statistics were somewhat better with a 36% rate of fraud, I think you might still look for a somewhat safer business model. Using the BBB statistics, how willing will consumers be to engage if 42% of cross border consumers with a problem can’t get satisfaction?

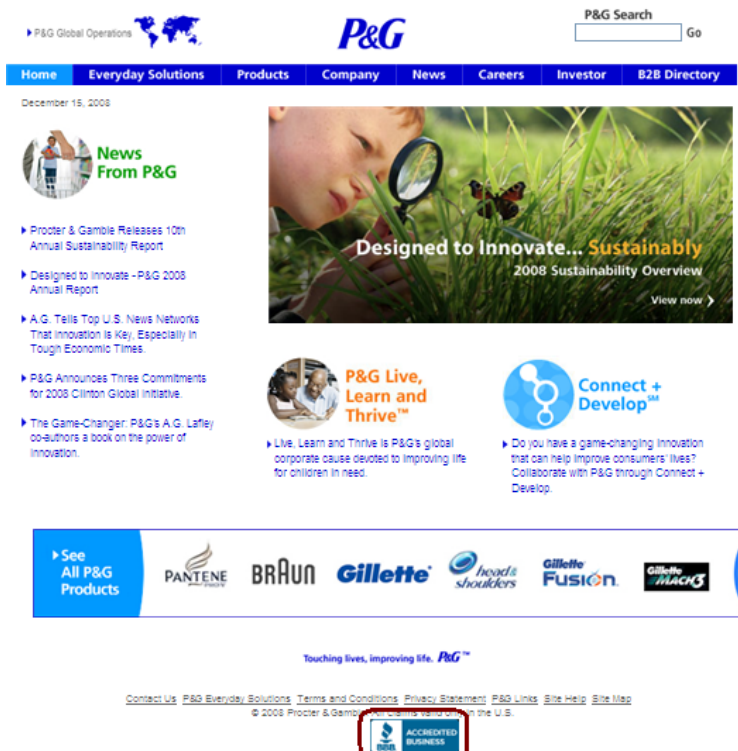
Fortunately, there are many organizations like the Economic Research Institute for ASEAN and East Asia, OECD, business groups like GBDe and the Asian Trustmark Alliance – and so many more – as well as governments at all levels – that have been collaborating over more than a decade to ensure that there are good solid answers to these questions.

For cross-border e-commerce, the answers are more important now than they have ever been, and they really haven't changed very much in the decade that I've been working with *BBBOnLine*:

- A common framework of high-level, internationally accepted standards of online business practice – standards that encourage consumer TRUST in cross-border commerce and are not the “small laws” that make it difficult or impossible for merchants to deal practically across borders;
- Simple methods of resolving problems when they arise, with as little resort to legal systems as possible;
- Ways for consumers to identify those merchants who have committed to abide by these standards and who participate in these dispute resolution mechanisms.

These are all the essential elements of “trustmark” programs – programs that have received wide encouragement from governmental organizations and private groups in many parts of the world.

To these three, I would add a fourth. Based on the very disturbingly high percentage of cross-border transactions that appear to result in some form of fraud, we need to develop educational programs in every country – and by every trustmark program – to encourage consumers to investigate merchants before they make a purchase – whether or not those merchants are displaying a trustmark.



As an example, a consumer can not only view the BBB Trustmark on a company's web site (as shown here on the Proctor and Gamble – a BBB Accredited Business' home page), but can also use the BBB web site to search for reports on companies with which they might do business.

Here are two examples:

[Login](#)
[Contact Us](#) | [Find a BBB](#)

- For Consumers
- For Businesses
- For Charities and Donors
- About Us
- News Center

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BBB Reliability Report for
Toyota Motor Sales U S A, Inc.
 A BBB Accredited business since 04/23/1996

BBB Rating: **AA** [Rating Explanation](#)

[FILE A COMPLAINT](#)

[PRINT REPORT](#)

If you have a dispute with this company, you may file a complaint. The BBB will try to mediate the dispute through our complaint process.

TrustLink
Learn more about this business

Click out this company's storefront. You can view photos of the business, read customer reviews, and even post a review yourself! ★★★★★

Company Profile
 Toyota Motor Sales U.S.A., Inc.
 19001 South Western Avenue Suite WC11
 Torrance, CA 90509-0991
 Phone: (800) 331-4331
 Fax: (310) 381-8247
<http://www.toyota.com>
 Contact: David Weigand - Department Manager
 Business Start Date: 1/1/1997
 Company ID: 10022092

Complaint Experience
 Bureau Summary and Analysis of customer complaints and company responses:
 Our complaint history for this company shows that the company responded to and gave proper consideration to most complaints. However, some complaints are unresolved meaning the company failed to properly address the complaint allegations or their response was inadequate.
 Although we have r... [More](#)

Accreditation
 This company has been accredited since 04/23/1996 and we are satisfied that it honors its commitment. The company has agreed to uphold our accreditation standards, which include a commitment to act in accordance with ethical business practices and to respond to customer complaints.

- In the first, a consumer is looking for a report on Toyota Motor Sales, U.S.A., headquartered in Torrance, California. Here the consumer can see that the company is a BBB Accredited Business, has an “AA” report status and can view the complaint history for the company.

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BBB Reliability Report for
Direct American Marketers

BBB Rating: **D** [Rating Explanation](#)

[FILE A COMPLAINT](#)

[PRINT REPORT](#)

If you have a dispute with this company, you may file a complaint. The BBB will try to mediate the dispute through our complaint process.

Company Rating
D
 Our opinion of what this rating means:
 We have enough concerns about this company (for example, their other, customer complaints, advertising, etc.) that we recommend caution in doing business with it.

Company Profile
 Direct American Marketers
 1000 East 1st Street Suite 440
 Santa Ana, CA 92705
 Phone: (800) 344-7580
 Contact: Anthony Brown - President
 Business Start Date: 6/1/1996
 Company ID: 17122

Complaint Experience
 Bureau Summary and Analysis of customer complaints and company responses:
 Our complaint history for this company shows that the business has not responded to customer complaints brought to its attention by the Bureau.

Accreditation
 This company is not an accredited business. This fact does not disparage the company in any way.

- By contrast, a consumer – even a consumer from another country – can look up the record of Direct American Marketers – which uses many names,

including “Prize Administrators” – and discover that they are NOT BBB Accredited and that they have a BBB rating of “D” (our second lowest). They can also learn that we have many unanswered complaints on the company.

Next to finding ways to make this type of “name and shame” process more a universal part of trustmark programs, the single most important part is making sure that dispute resolution programs – which have been encouraged by GBDe, OECD and Consumers International (among others), exist in fact and not just on paper.

For that, ECOM and EC-Network are to be commended for developing a system that shows real promise as a way to link various trustmark programs – and their individual dispute resolution processes – together to handle cross-border consumer and small business disputes. Professor Hayakawa will discuss the ECC-Net for Consumer Disputes on E-Commerce shortly. I can only tell you that BBB has worked with EC-Network over the past two years, handling consumer complaints between U.S. and Japanese consumers and businesses. I can tell you that – even without a technology platform to assist us – we have been able to help in resolving disputes between merchants in both countries. With technology – and the Consumer Advisory Liaison Office system Ms. Tonomura has explained – this can only improve.

So, yes, the job ahead is difficult and yes, our task has been made harder by consumers’ perceptions of whether – and how much – they can TRUST online commerce given what has happened in the global marketplace over the past year.

But online commerce has already revolutionized certain aspects of the marketplace – and our collaborative work seems to me a necessary part of the future of a truly vibrant cross-border online consumer marketplace.

Thank you for including BBB and me in this important conference.

2.2. ECC-Net

(1) What is ECC-Net?

The European Consumer Centres Network (ECC-Net) was established by the EU to promote consumer confidence by advising citizens of their rights as consumers and providing easy access to redress, particularly in cases where the consumer has made a cross-border online purchase. Historically,

there were two previously existing networks in the EU: the European Consumer Centres, or 'Euroguichets', which provided information and assistance on cross-border issues, and the European Extra-Judicial Network, or "EEJ-Net", which helped consumers to resolve their disputes through alternative dispute resolution (ADR) schemes. ECC-Net was created by merging those two networks in 2005.

ECC-Net consists of twenty-nine Consumer Centres in all twenty-seven Member States and two non-Member States: Iceland and Norway.⁷⁹ These twenty-nine Consumer Centres work together within the scheme of the network, particularly for cross-border consumer online transactions in Europe. The Consumer Centres jointly work to provide information on both EU and national rules to any individual with a complaint or a dispute in a cross-border online purchase. When required, the Consumer Centres jointly work to provide a complaint-handling service with translation in cases where a consumer purchased something online from a foreign business entity. In 2007, ECC-Net dealt with over 55,000 cases including requests for information, complaints and disputes.

In order to maintain this scheme, not only the Member States but also the EU provide financial support. For the period 2007-2008, the EU paid over €8.5 million, which is equivalent to half of the total budgets of all of the Consumer Centres.

⁷⁹ Additionally, ECC-Net cooperates with other EU-wide networks that provide essential information on EU and national legislation and case-law – e.g. the European Judicial Network is concerned with improving the implementation of civil and commercial law, SOLVIT addresses problems arising from misapplication of Internal Market rules and FIN-NET is an out-of-court network for financial services. By providing direct feedback on specific issues of concern to consumers, ECC-Net also provides valuable input for the European Commission on consumer policy issues.

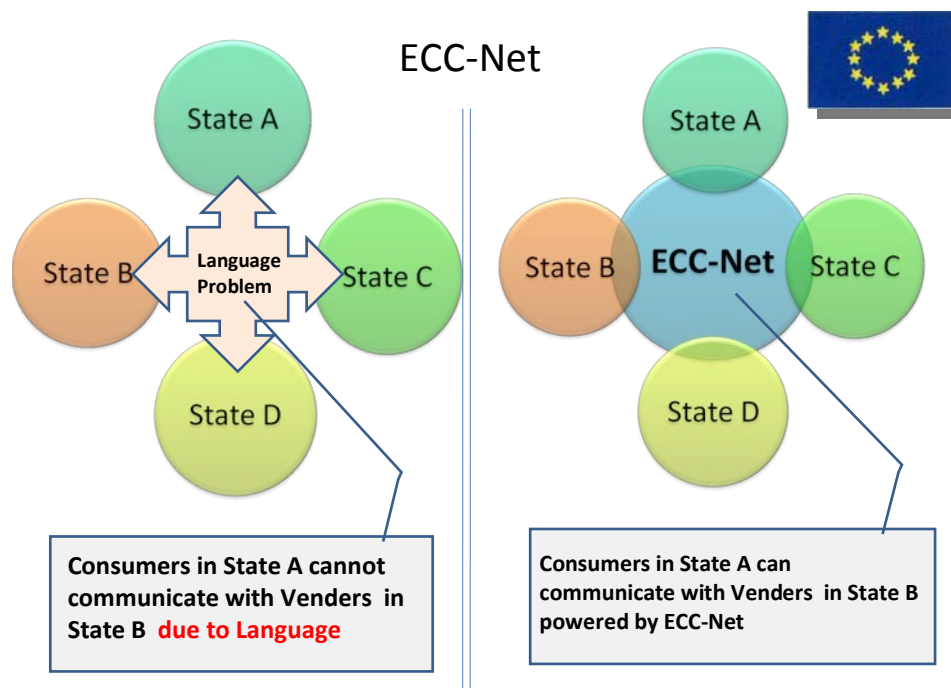


Figure2-2-1 What is ECC-Net?

(2) Consumer Centres authorized in ECC-Net

Within the scheme of ECC-Net, each State has a responsibility to establish its own Consumer Centre. Some States newly established their own Consumer Centres for this purpose. Other States authorized pre-existing consumer institutions as the Consumer Centres for this scheme.

Also within the scheme of ECC-Net, each Consumer Centre must have a minimum of four staff members, including one legal expert. They work for consumers to provide information, to provide a complaint-handling service with translation and to issue an annual report. The purpose of the report is to highlight the relevant e-commerce work undertaken, to provide an analysis of the consumer complaints received and to seek the main problems that consumers face when engaging in cross-border consumer online transactions.⁸⁰

⁸⁰ The scope of the annual report is limited to cross-border online transactions involving the sale of consumer goods and services. Although a substantial number of online transactions involve contracts for transport services, such as air travel or car rental, and accommodation services, such cases are excluded from the statistics used in the report.

(3) Global statistics

The presence of ECC-Net makes it easy in Europe to establish fruitful international statistics from the information that has been received through analysis of the consumer complaints and disputes handled. There are a number of noteworthy statistics, for example, in the 2007 annual report.⁸¹

In total, during 2007, ECC-Net received 19,838 simple complaints, of which 11,056 (56%) concerned transactions involving e-commerce as the selling method. It also handled a total of 5,192 normal complaints and disputes in 2007, of which 2,583 (50%) dealt with claims where the selling method was designated as e-commerce. Except for cases of transportation services or accommodation services, ECC-Net received 8,834 simple complaints and 1,552 normal complaints and disputes in relation to online purchases.

The nature of the complaint falls under eight separate headings: delivery, product/service, contract terms, price and payment, redress, selling techniques/ unfair commercial practices, deceit, and others. The three main headings of complaints – delivery, product/ service, and contract terms – together gave rise to 86% of the total number of normal complaints and disputes (50%, 25% and 11%, respectively).

34% of e-commerce normal complaints and disputes handled by ECC-Net were classified as relating to audiovisual, photographic and information processing equipment, and would include the purchase of televisions, cameras, computers, and other such electronic equipment. The general heading of ‘cars’ accounts for 9% of normal complaints and disputes dealt with by ECC-Net, and would include not only the purchase of vehicles, but

⁸¹ The cases received by ECC-Net are categorized into “simple complaints”, “normal complaints” and “disputes”. A “simple complaint” is defined as a statement of dissatisfaction by a consumer concerning a cross-border transaction with a seller and requires no follow-up. A “normal complaint” is any complaint that requires subsequent intervention or follow-up, and is therefore shared with the Consumer Centre of the country where the business entity is based. A “dispute” is the referral of a complaint to an out-of-court scheme or ADR body, in cases where the complaint has not been resolved through direct contact between the business entity and the consumer. The statistics that are presented in the reports, unless otherwise stated, are based on “normal complaints” and “disputes”.

also products relating to the operation of personal transport equipment, such as the purchase of spare parts and accessories. Another problem area for consumers concerns the online sale of tickets for sporting events, concerts and other major entertainment events.

The largest number of normal complaints and disputes involved German business entities, which accounted for 44% of the total amount. This is a repeat of the trend observed in recent e-commerce reports produced by ECC-Net, with French, UK and Dutch business entities also featuring at the top of the list, accounting for 12%, 10% and 7%, respectively. This means that four Member States accounted for almost three-quarters of the overall number of e-commerce related normal complaints and disputes, while the top ten Member States accounted for over 92% of the total.

(4) Translation

One of the specific features of ECC-Net is to provide a complaint-handling service with translation in cases where a consumer purchased something online from a foreign business entity.

There are various languages actually used in the area of the EU. In order to attract local consumers, many of the websites operated by foreign business entities are designed in the local language. Through such websites, it is not difficult for consumers and foreign business entities to communicate with each other for consumer online transactions. It is difficult, however, for ordinary consumers to complain to the foreign business entities of the online transactions because of language problems.

In the scheme of ECC-Net, the English language is commonly used for communications between the Consumer Centres. In the process of cross-border complaint-handling services, a staff member from the Consumer Centre of the State where a consumer is located (State A) translates the complaint from the language of State A into English. The complaint in English is then passed to the Consumer Centre of the State where the business entity is located (State B) in the scheme of ECC-Net. At that point, a staff member from the Consumer Centre of State B translates the complaint from English into the language of State B.

If the business entity responds to the complaint in the language of State B, the response is translated into English by the Consumer Centre of State B and is passed to the Consumer Centre of State A. Then, the response is

translated into the language of State A and is passed to the consumer.

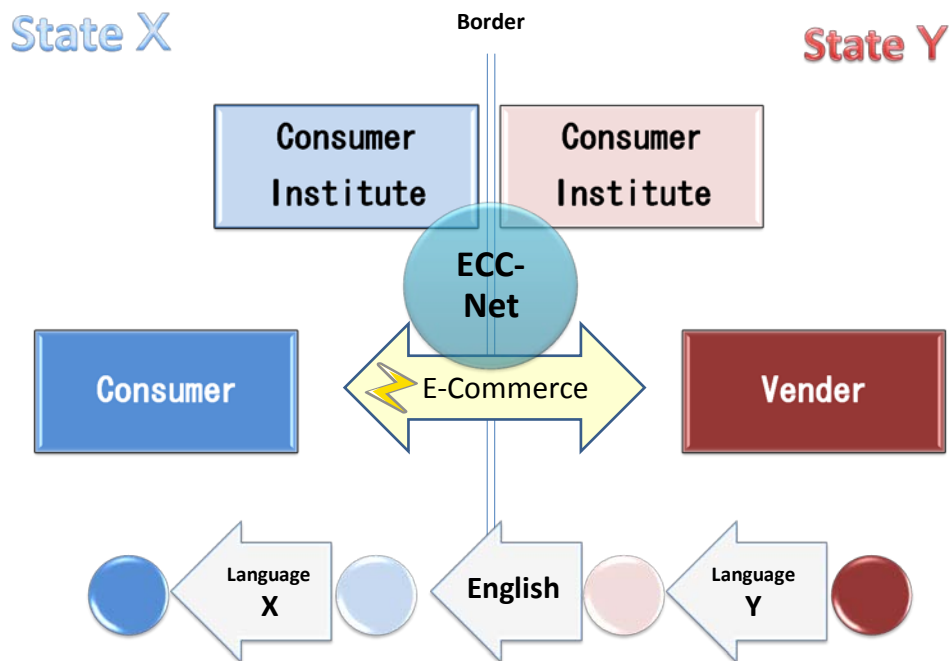
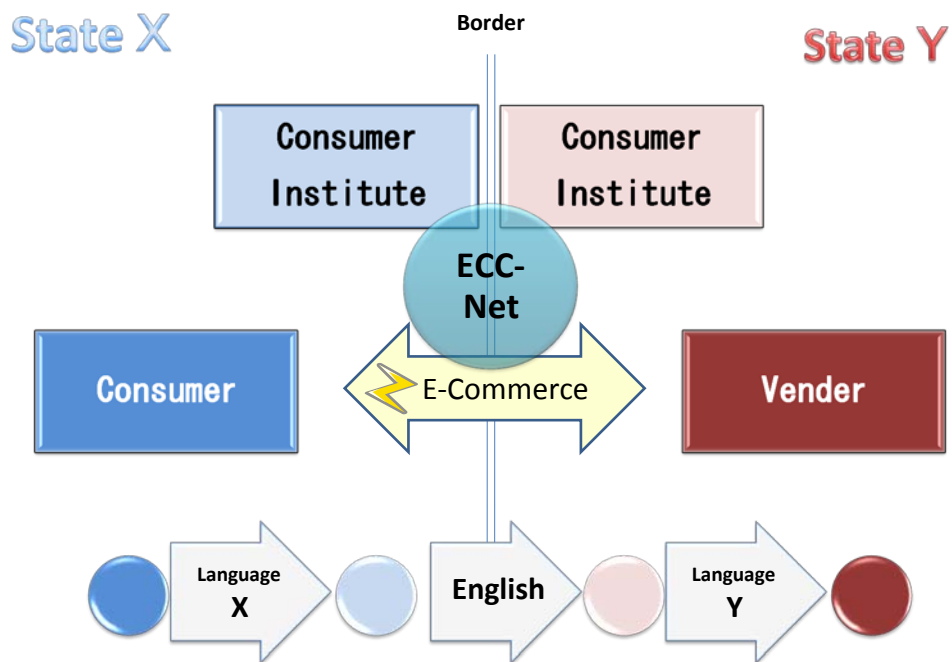


Figure 2-2-2 Translation

(5) Final remarks

ECC-Net is a successful example of an international network of cross-border complaint-handling. In Asia, there is the same language problem as in Europe, especially for troubled cases of cross-border consumer transactions. The idea presented by ECC-Net will be a powerful and feasible way to resolve many such troubles in cross-border consumer transactions, even in Asia.

3. Toward international cooperation for consumer disputes on e-commerce

3.1. Asia Pacific Trustmark Alliance (ATA)

In several countries, the existence of a Trustmark program is one of the key elements that have contributed to the increase in trust in e-commerce and the growth of the electronic commerce (EC) market. Consumers can easily identify reliable e-commerce businesses with online Trustmarks, and can feel safe when buying goods and services from Trustmark-accredited businesses. The development of Trustmark programs is particularly active in Asia. With regard to the efforts of each country to build confidence in the e-commerce environment, which were discussed in section III-2, we hereinafter introduce an alliance amongst Trustmark organizations in the Asia Pacific region called the Asia Pacific Trustmark Alliance (ATA).

(1) History of ATA

Online Trustmark or alternative dispute resolution (ADR) providers in Singapore, South Korea, Taiwan, and Japan originally formed the Asia Trustmark Alliance (ATA) in 2003. This was the world's first alliance among Trustmark and ADR organizations. Following the accession of the United States and Mexico, all ATA members signed a Memorandum of Understanding (MOU), and the alliance was renamed as the Asia Pacific Trustmark Alliance (ATA) in 2007. In June, 2008, the Vietnamese Trustmark organization became a member of the ATA. As of February 2009, the ATA has grown to include nine organizations based in seven countries. Thailand and Malaysia have participated in ATA meetings as observers, and Thailand aims to join the ATA this year. The Consumer Confidence Issue Group of the Global Business Dialogue on Electronic Commerce (GBDe)⁸² has

⁸² Refer to 3.2

supported ATA activities. CaseTrust of Singapore, Verified of Thailand, TrustVN of Vietnam and EC Network of Japan are also participants in this working group.

Members of the ATA

·Singapore

CommerceNet Singapore (CNSG)⁸³

Consumer Association of Singapore (CASE)⁸⁴

·South Korea

Korea Institute for Electronic Commerce (KIEC)⁸⁵

·Taiwan

Secure Online Shopping Association (SOSA)⁸⁶

·Vietnam

TrustVN⁸⁷

·Mexico

Mexican Internet Association (AMIPCI)⁸⁸

·USA

TRUSTe⁸⁹

·Japan

EC Network⁹⁰

TradeSafe⁹¹

·Thailand

Department of Business Development (DBD)⁹²

(2) Achievements of the ATA

ATA members began to discuss the creation of common criteria, led by Singapore, in 2007. After vigorous debate at the meetings in Tokyo and Mexico City, the ATA decided to publicize the “Guidelines for Trustmark

⁸³ <http://www.cnsg.com.sg/>

⁸⁴ <http://www.case.org.sg/#>

⁸⁵ <http://www.kiec.or.kr/>

⁸⁶ <http://www.sosa.org.tw/index.asp>

⁸⁷ <http://www.trustvn.gov.vn/> (Currently inaccessible)

⁸⁸ <http://www.sellosdeconfianza.org.mx/comoobte.php?idi=2>

⁸⁹ <http://www.truste.org/>

⁹⁰ <http://www.ecnetwork.jp/en/>

⁹¹ <http://www.tradesafe.co.jp/index.html>

⁹² <http://www.trustmarkthai.com/ifmportal/Home/tabid/382/Default.aspx>

Operators (GTO)”⁹³ in compliance with guidelines issued by the OECD⁹⁴ and APEC⁹⁵ in 1999, and GBDe⁹⁶ in 2000. The ATA hopes that the GTO will serve as a useful reference for those countries or organizations that are considering launching Trustmark programs, especially in the Asia Pacific region. Currently, the level of certification criteria differs somewhat between ATA members. However, the ATA is aiming at utilizing the GTO as a basis for harmonizing the Trustmark certification criteria used by each of the ATA members, and realizing mutual recognition of the criteria amongst members in the future. The following is the outline of the GTO.

The Outline of the Guidelines for Trustmark Operators (GTO)

1. Disclosure of information
 - 1-1 Accuracy
 - 1-2 Accessibility
 - 1-3 Information domains
2. Practices
 - 2-1 Cancellation/return
 - 2-2 Communications
3. Security
 - 3-1 Security of transferred information
 - 3-2 Security of stored information
 - 3-3 Security of information held by third parties
 - 3-4 Retaining confidential information
 - 3-5 Proportionality of safeguards
 - 3-6 Periodic review and reassessment
4. Privacy
 - 4-1 Preventing harm

⁹³ <http://www.ataportal.net/consumer.html>

⁹⁴ Recommendation of The OECD Council Concerning Guidelines for Consumer Protection in the context of Electronic Commerce;
<http://www.oecd.org/dataoecd/18/13/34023235.pdf>

⁹⁵ APEC Privacy framework;
http://www.apec.org/etc/medialib/apec_media_library/downloads/taskforce/ecsg/publications/2005.Par.0001.File.v1.1

APEC Online Consumer Protection Principles
http://www.nacpec.org/docs/Ecommerce_steering_grp.pdf

⁹⁶ GBDe Trustmarks;
[http://www.gbd-e.org/ig/cc/Trustmarks Includes Annex of Global Trustmark Programs_Sep00.pdf](http://www.gbd-e.org/ig/cc/Trustmarks%20Includes%20Annex%20of%20Global%20Trustmark%20Programs_Sep00.pdf)

- 4-2 Notice
- 4-3 Collection limitation
- 4-4 Uses of personal information
- 4-5 Choice
- 4-6 Integrity of personal information
- 4-7 Security safeguards
- 4-8 Access and correction
- 4-9 Accountability

5. ADR

- 5-1 Provision of notice regarding means of resolving disputes directly with merchants
- 5-2 Internal complaint resolution
- 5-3 Notice regarding submission of dispute to ADR system(s)
- 5-4 Cost of ADR system
- 6 Monitoring
- 6-1 Monitoring of merchant by certifier
- 6-2 Program updating by certifier

(3) Activities of the ATA

- The main activities of the ATA are sharing experiences and exchanging views with members. The important advantage of participation in the ATA is that members' credibility can be enhanced in each domestic market, and members' influence over e-commerce businesses and governments can be increased. Furthermore, accredited e-commerce merchants of the ATA may be able to expand business opportunities beyond local markets.

- Initiated by SOSA of Taiwan, the ATA now has an official website available: ([://www.ataportal.net/index.php](http://www.ataportal.net/index.php))

- The ATA rotates the one-year-term of the chairmanship post, and holds a meeting among members every year. Currently, Taiwan and Japan respectively serve as a chair and vice-chair.

- The ATA also has a collaborative system for assisting members in solving cross-border complaints when consumers have trouble with Trustmark-accredited businesses within member countries.

- An Ad Hoc Working Group Meeting was held in Singapore on February 27, 2009 in conjunction with APEC Electronic Commerce Steering Group

(ECSG)⁹⁷ meetings. The Annual Meeting will be held in the fall of the same year. The ATA is also aiming at enhancing its international presence at APEC ECSG. Topics including the incorporation of the ATA, the increase in Trustmark-certified businesses, and ways of spurring the development of e-commerce businesses within ATA member countries, were discussed at the meeting.

3.2. Concept of International Consumer Advisory Network (ICA-Net)

(1) Introduction

One of the attempts for Alternative Dispute Resolution (ADR) in cross-border Business to Consumer (B2C) e-transactions is called International Consumer Advisory Network (ICA-Net), an international network for handling consumer complaints in cross-border B2C e-commerce, which has been promoted by the Global Business Dialogue on e-commerce (GBDe).

GBDe is a worldwide, CEO-led business initiative, established in January 1999 to assist the development of a global policy framework for the emerging online economy. GBDe has been actively promoting a private sector/government dialogue on convergence-related issues. Today, there is an urgent need to build a global policy framework incorporating the new paradigm. GBDe now has a total of 19 organizations from Japan, Taiwan, Malaysia, Hong Kong and the USA.

The Consumer Confidence Issue Group (CCIG), one of the working groups of GBDe, has released various recommendations over the last 10 years on how to build trust between consumers and merchants in cross-border e-transactions, with many recommendations adopted by governments and related organizations, including Asia Pacific Economic Cooperation (APEC), the Organisation for Economic Cooperation and Development (OECD), Asia Pacific Trustmark Alliance (ATA), and Consumers International. CCIG has focused on three key factors for building trust between consumers and merchants, namely ADR, Trustmark, and Privacy Data Protection, including ongoing dialogue with various stakeholders.

⁹⁷

http://www.apec.org/apec/apec_groups/committee_on_trade/electronic_commerce.htm

1

At GBDe's plenary meeting held in Tokyo in 2007, CCIG proposed a framework for an International Consumer Advisory Network (ICA-Net), which would involve global cooperation to provide consumer complaint handling services in cross-border e-commerce transactions (Figure 1). The proposal of the ICA-Net framework was positively accepted and encouraging comments for its execution were provided by the participants at the Tokyo meeting, such as the OECD, the US Federal Trade Commission (FTC), the Ministry of Economy Trade and Industry (METI) of Japan, and ATA.

This chapter discusses ICA-Net, which will be the first step to realizing cross-border ADR in the future.

(2) Background

GBDe has consistently highlighted the significance of dispute resolution in e-commerce. In 2006, GBDe surveyed how ADR in each country has developed and learned that in addition to the financial burden of ADR, one difficult issue remains. That issue is the response to dispute resolution arising from cross-border transactions. In 2007, GBDe considered what it would take to build market confidence, by focusing particularly on global cooperation among ADR providers and analyzing the current status.

i) Current Status of Global Collaboration in ADR

ADR global collaboration started with the creation of bilateral partnership agreements. The first bilateral cooperation was formed in 2001 between the Better Business Bureau (BBB) (U.S., Canada) and the Electronic Commerce Promotion Council of Japan (ECOM), and now the EC Network of Japan has taken over as BBB's partner. In 2005, BBB (U.S., Canada) concluded a partnership agreement with TrustUK (U.K.) as well. Although these joint activities provide complaint handling services rather than ADR services, they have provided a certain level of effective resolution to cross-border problems for consumers. Only a limited number of nations have concluded such bilateral agreements at present. Nevertheless, the need for collaboration is expected to increase. For example, about 20% of the complaints filed to EC Network from Japanese consumers are related to cross-border transactions. Furthermore, cross-border purchasing is likely to continue to grow from the U.S. to Europe and Asia.

Recently, online complaint handling has been promoted as a way of providing more effective services. With the web-based Online Dispute Resolution (ODR) Platform, when a consumer files a complaint, the message is sent to the other party by an automated email system. BBB developed this system with the support of the United States Government and uses it with TrustUK. The online system helps to eliminate the time and effort involved in conveying complaints to another party. More focus on responding to fraudulent cases, which make up the largest number of filed complaints, and on automatic translation of different languages, would make the system more effective.

ADR collaboration has also been considered within the Trustmark Alliance. In general, however, the ADR program provided by Trustmark certification bodies is available only to businesses holding the Trustmark. In other words, the programs do not always cover all complaints and disputes arising from cross-border consumer transactions.

Econsumer.gov, a joint project by law enforcement agencies of 21 different countries, has a complaint report form available on its website (<http://www.econsumer.gov/>) that can be used by consumers living anywhere in the world. At present, the form is available in seven languages, and anyone who can read and write in one of these languages can submit a complaint via the website. The complaints posted on this site become shared data among the participating countries' law enforcement agencies, but they do not provide redress to individual cases. Cooperation with ADR services was considered and executed as a pilot project in 2003 and 2004 and is still in the testing phase. At this point, the site's main involvement with ADR is publication of an international directory of ADR providers.

The most-watched initiative is the regional network known as the European Consumer Centers Network (ECC-Net), which 26 European nations have joined. In 2005, European Consumer Centers (ECC) were established in each country with funding from the European Commission as well as its member countries. For cross-border consumer transactions, the ECCs systematically provide a complaint handling service and related information upon request from consumers. ECC-Net is designed as a flexible and effective scheme, offering services by phone and email as well as in translation.

ii) OECD Recommendation on Consumer Disputes and Redress

Recommendations issued by the OECD in July 2007⁹⁸ propose that each economy “provide domestic frameworks for dispute resolution and redress”. As for cross-border complaints, the OECD recommendations propose to “provide clear information”, to “expand the awareness of justice system participants”, and to “minimize legal barriers to applicants from other countries”. The recommendations also point out the necessity of “private sector cooperation” and “collection and analysis of complaints filed from overseas consumers”. GBDe is trying to devise a practical framework to realize the OECD recommendations.

(3) Framework: International Consumer Advisory Network (ICA-Net)

The new framework 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

⁹⁸ OECD Recommendation on Consumer Dispute Resolution and Redress (2007)
(<http://www.oecd.org/dataoecd/43/50/38960101.pdf>)

between domestic organizations for cases that can not be resolved through complaint handling and ADR providers. These purposes and activities are exactly the same as those of ECC-Net.

In order to participate in ICA-Net, commitment from each country's respective government will be required. This is because past experience with global collaboration shows that many complaints from overseas consumers cannot be solved without involving organizations that have compelling force. Depending on the circumstances of each country, different organizational bodies are expected to participate in the network as CALOs, including government agencies, private consumer associations, and ADR providers. An important role of each government, however, will be to organize a system in which effective investigations can be conducted and adequate support can be provided for the settlement of complaints posted from foreign countries. It is each government's responsibility not to let their country become a haven for criminal activity or a den of illegal business enterprises.

Multilateral operation will present some challenges. For instance, standardizing the CALO certification and protocol of complaint transactions might be a barrier to participation in ICA-Net for countries still new to e-commerce. It could also raise the management costs of the network. Moreover, management costs and issues of privacy and data protection will grow significantly when consultation/complaint data are consolidated into a single database. It is therefore preferable that ICA-Net be created as a loose network in which voluntary participation is possible from anywhere in the world, and that it be decentralized so as not to generate high management costs. The following chart depicts the basic concept of a troublesome case between a consumer in country A and a business in country B as handled by ICA-Net.

ICA-Net (International Consumer Advisory Network)

-----simple, low-cost and interoperable-----

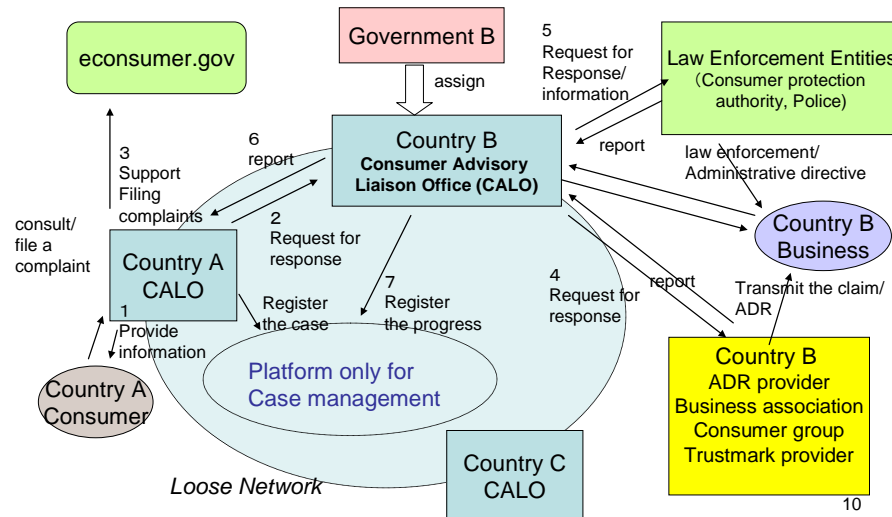


Figure 3-2-1

- i) The role of CALO in country A: support to the consumer in country A
 - CALO receives inquiries from its domestic consumers, and provides advice on legal matters, ways of trouble settlement, and systems or agencies available for dispute settlement.
 - When a consumer files a complaint to the said business, CALO translates his/her complaint into English, reports it to the business, and gives feedback to the consumer.
 - For complaints other than transactions, such as related to lotteries, gambling, spam, or identity theft, as well as cases where the location (country) cannot be identified, CALO recommends reporting them through the site of econsumer.gov.
- ii) The role of CALO in country B: correspondence to the business in country B
 - When a complaint is filed to a domestic business through an overseas contact point, CALO asks for a response, depending on the nature of the trouble, from an industry group, a self-regulatory scheme (Trustmark, etc.) or the shopping mall where the said business belongs.

Or, the CALO might make direct contact with the said business.

- Cooperation by law enforcement institutions is called for when the contact information of the business is not known, when there is no response from the business, or when there seems to be a breach of the law.
- The CALO reports the result to the CALO in the consumer's country.

iii) Information management:

- The platform for case management is used to manage only the progress of a complaint settlement exchanged between CALOs, not the content. By allowing the progress report to be seen by the CALO of a third country, it is expected that peer pressure will accelerate prompt action for complaint settlement.
- The data stored by the CALO in each country should be analyzed responsibly and used to gain awareness of marketplace trends and provide information to prevent consumers from becoming involved in trouble.
- Universal standards are necessary for the handling of personal information and trade secrets.

(4) GBDe recommendations in 2007

In 2007, GBDe's CCIG discussed the cross-border ADR issue several times at a workshop with several Japanese experts and drafted the above-mentioned framework. GBDe made the following recommendations at GBDe's plenary meeting held in Tokyo in November 2007:

- For the protection and redress of domestic consumers in global e-commerce transactions, the current status should be checked and systems organized.
- Following the OECD 2007 Recommendations, domestic systems to provide redress for overseas consumers should also be organized. Before doing so, complaint data filed from overseas consumers should be collected and analyzed in cooperation with the private sector.
- To build overseas consumer confidence in the domestic e-business environment, the creation of an International Consumer Advisory Network (ICA-Net) should be discussed at global intergovernmental conferences, such as the OECD, APEC, and the International

Consumer Protection and Enforcement Network (ICPEN). The U.S., Japan, and the European Commission, which are ahead of other countries in the development of e-commerce, are expected to play a leading role in this discussion.

(5) Implementation of ICA-Net

In order to realize the implementation of ICA-Net, GBDe's CCIG held a series of meetings and dialogues throughout 2008 with various stakeholders who were related to the implementation of the ICA-Net framework:

- Governments and agencies: Japan, USA, Singapore, Malaysia, Korea, Vietnam, Thailand, Taiwan
- ADR service providers: EC Network (Japan), BBB Online (USA), TRUSTe(USA), Consumers Association of Singapore (CASE), Korea Institute for Electronic Commerce (KIEC), Secure Online Shopping Association of Taiwan (SOSA)
- Consumer organizations: Consumers International, National Consumer Complaints Center of Malaysia (NCCC)
- International organizations: APEC, EU

Through the discussions with stakeholders, the concept and plan of ICA-Net were modified in accordance with the circumstances of each country.

A phased implementation plan for ICA-Net has been developed:

- Phase 1 (2009-2010): Trial involving a few participants with existing resources
- Phase 2 (2011-2012): Expansion to APEC region
- Phase 3 (2013-2014): Connection with ECC-Net (European Consumers Center Network)

The ICA-Net framework was also presented at the APEC Electronic Commerce Steering Group (ECSG) meeting in August 2008, and it was recognized by APEC ECSG that the ICA-Net initiative contributes to the Data Privacy Pathfinder project.

In conjunction with the ERIA project, the phase one trial of ICA-Net started in January 2009 with five participating organizations: EC Network (Japan), CASE (Singapore), NCCC (Malaysia), and BBB Online (USA) and SOSA(Taiwan). In addition to handling consumer complaints, ICA-Net is also utilized as a useful communication tool for sharing information among

the participating organizations. Vietnam and Thailand have expressed their strong interest in the ICA-Net framework and have already started the information sharing activities with other participants and ERIA project participating members. They wish to officially join the trial in the second half of the trial period. Consumers International is also actively involved in ICA-Net activities and their member organizations could be future participating members of ICA-Net.

Dialogue with related stakeholders such as APEC ECSG, ATA, and Consumers International will continue in 2009, including on issues such as progress updates of the trial mentioned above, generating wider recognition of the ICA-Net framework, and encouraging more participation in the APEC and ASEAN region.

3.3. Prospects for application of an ODR System

In line with the basic concept of ICA-Net described in 3.2, a trial system was developed to test its application, as a research project.

The trial version of the system was designed and is being managed by Japanese entities (EC Network and ODR Room Network), since Japan was the author of the ICA-Net proposal at GBDe, based on its practical experiences of bilateral, cross-border complaint handling in e-commerce.

(1) Back ground of the system

- Progress based on the proposal at GBDe

As described in section 2.1, the cost of maintaining security when handling consumer complaints containing sensitive personal information was one of the key issues of ICA-Net. For this reason, in the proposal at GBDe, a system was proposed that would not keep details of complaints, but would instead simply share information on the proceedings and current status of handling complaints. With subsequent research, we adopted a “community-style platform system” based on Open Source Software to save costs and maintain security.

We learned that ECC-NET has been collecting and analyzing complaint cases under the strong leadership of the European Commission (EC). Each member of ECC-NET keeps the information related to those cases, and they are obligated to submit an annual report to the EC, which would constitute an expected heavy workload. We planned to minimize the workload of

collecting and analyzing cases on cross-border complaints, since we do not expect to be a strong centralized organization. However, the system described above, with some additional features, would make it possible to collect and analyze information with little additional work by CALOs.

A commitment from government was needed for supporting and assigning a CALO as per the GBDe proposal. However, some countries pointed out the difficulty of assigning a specific CALO by government because of fairness. Additionally, we were anxious about timeframes for governments to assign a specific entity to be the CALO for that country. Consequently, during the pilot project, we aim to have a common platform to communicate among members over a wide range, even when an entity can not be approved by the government, in which case we would expect their involvement to the extent possible.

Fortunately, as ICA-net is approved as a theme in ERIA, we were able to involve participant countries earlier than expected. Some countries joined ICA-Net with only a provisional commitment from their government. Therefore, it will likely take some more time to effectively address complaint cases where law enforcement agencies need to be involved.

- Communication and complaint handling

Through Professor Hayakawa's report, we learned from the experience and research of ECC-Net in Europe that complaint handling and dispute resolution processes can work well based on honest communication and shared confidence among members.

This fact suggests to us that the ICA-Net system should be used not only for complaint handling but also used for exchanging information and communication among members..

- User of the system

We basically assumed that the users of the system should be the CALOs playing the liaison office role (the window) for consumers or e-commerce business entities.

However, participants need not necessarily take part in the system as CALOs under the circumstances described above. Instead, it is expected that the quality and quantity of shared information can be improved through the participation of a variety of members, even including those not directly related to each complaint case that is handled.

The common language in the system is English. One of the key roles of CALOs in the process of handling complaints related to cross-border transactions where first languages differ, must be as a translator. That is, the CALO in each country would translate the complaint from the consumer or the business into English to post it into the system. A CALO on the other side could then receive the translated complaint through the system and then translate it into the relevant language so that it can in turn be forwarded to a business, consumer or related entities.

- Flexibility and interoperability

The complaint handling process has not yet been established since we have not yet handled a sufficient number of complaints through the system, and several legal discussions have not reached conclusion. However, the system itself should not depend on a specific platform or certain system developers. Rather, the system should continue to be modified in a flexible manner as the base of complaints handled is built up.

In addition, the system and the platform could connect with or communicate with other systems. As complaints are handled on an ongoing basis, shared definitions that would apply to the complaint handling process and to its various stages of progress could be discussed and defined to allow for the sharing of information on complaints. The system could then use these defined categories to interoperate between other complaint handling networks or entities.

- Cost effectiveness and business process re-engineering

The ideal would be to design and develop a dedicated system for all of the purposes outlined above, but that could take a lot of time and would be expensive. From the point of view of flexibility, developing a dedicated system may not be the most appropriate measure, since it is not cost effective to develop a the dedicated complaint handling system to handle a small amount of e-commerce complaints.

An open source software⁹⁹ platform that could be customized and modified according to “trial and error” could be the most appropriate solution for this situation.

⁹⁹ The characteristics of open source software are specified as “free-redistribution” and “a source code that is open to the public”. These defining characteristics are based on the Debian Free Software Guidelines.
“http://en.wikipedia.org/wiki/Open_source_software”

Any open source platform can have limitations for modification based on technical or cost issues, so one possibility is to adapt the complaint handling process to align with existing procedures in the system, through the process known as Business Process Re-engineering (BPR¹⁰⁰).

- Security and usability

Email could be used as an effective measure for communications and complaint handling. However, it is obvious that the following problems exist:

- There is a high degree of vulnerability without email encryption
- Information leakage can occur from personal PCs through theft or lost
- It is often difficult to keep track of email correspondence

The community-style-platform known as social networking service (SNS) could help resolve or mitigate those issues. Additionally, it may also be effective due to the following reasons:

- Integrating data in one location makes it easy to back up data for safety purposes.
- Handing over information to successors after personal changes is more efficient with this system, as is sharing information with superiors and colleagues.
- Performance in terms of information retrieval is high.

The security of the system is definitely important for consumer complaint handling since the process needs to handle personal information and trade secrets, as well as internal intelligence. The system provides a Secure Sockets Layer (SSL) for encryption with authentication by personal ID and password. Furthermore, the system supports a security feature for complaint handling known as the “invitation method”¹⁰¹, which limits access to the virtual space for the handling of complaints.

The security process frequently contradicts with the operability of the

¹⁰⁰ One of the computer-aided approaches to accomplish missions.

“<http://en.wikipedia.org/wiki/BPR>”

¹⁰¹ “The invitation method” works not only for security but can also be equipped for self-directed management. Members, CALOs, or concerned-parties could invite other concerned parties based on their own responsibility under established guidelines. This concept is essentially a loosely-knit network, and it is possible to make ICA-Net function without a central management entity, but rather with periodic maintenance carried out by a system integrator.

system for users. It is possible to develop or modify the system to have both security and ease of operation. However, the system also has cost limitations. A possible measure is the Business Process Re-engineering (BPR) approach, which would involve adapting procedures to align with the existing system.

Until users become accustomed with the new processes, adjusting the security level temporarily could be a possible option.

Taking into account the points above, the trial system has been established with the following system configuration:

- Open source platform

“OpenPNE” is the most frequently adopted platform for social networking services (SNS) including even “Mixi”, which is the most well-known community site in Japan. We could expect to have updated versions since dozens of system developers support OpenPNE.

- Server

The application and database are located in the Internet Data Center managed by NTT-Communications¹⁰².

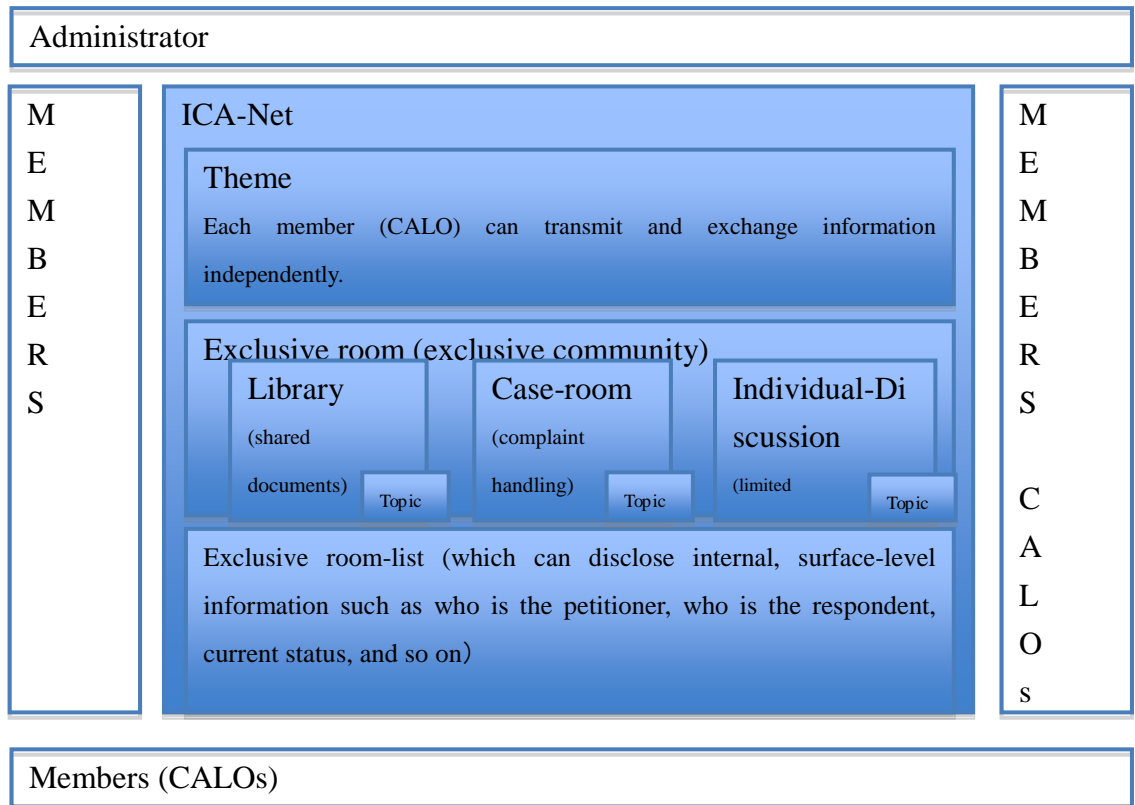
- Customizing

The system works as an English version with an “Exclusive Room” list feature developed to allow users to monitor the status of secured complaint handling in the space.

¹⁰² NTT-communications is a company that is maintains one of the largest confidential internet data centers in Japan.

(2) Outline of the trial

i) Structure and functions of the trial system



The system is a “community-style platform”, based on Social Networking Service (SNS) systems. It is open-source, allows for communication between or among members in a group, and it can work as a platform to support resolving disputes.

To handle complaints, the system should be secured. At this point, it is configured for high exclusivity with its “invitation” method, so it is more secured than an email system. The method has two layers of invitation. In the first layer, only one administrator (the secretariat) and invited members can access the system. Invitations to “exclusive rooms” form the second layer security, which allows access only to those individuals who are approved by the exclusive room owner.

(a) Participants

Members

(CALO: Consumer Advisory Liaison Office to handle complaints)

CALOs are members invited by the secretariat to communicate or to handle complaints. A member could invite other concerned parties as well.

(Concerned parties)

The concerned parties include lawyers, payment operators and consumer institutes, which would have a role in providing support for complaint handling.

Secretariat (System-administrator)

The secretariat manages this community system. (Tentatively, EC Network and ODR Room Network are in charge.) The secretariat invites members through the system. An invitation email can be sent automatically.

(b) Functions and Features

Theme

Each member can transmit any information independently. Members can also define the level of disclosure among the following three options: “disclose to all”; “disclose to connected members”, and: “do not disclose”. Members can also add comments for each other.

Exclusive room

Access to this community is configured exclusively by invitation. Additionally, the “exclusive room” area allows members to create an exclusive community for discussion that can not be accessed without authorized registration by each area owner. ICA-Net provides the following three types area as “exclusive rooms”. Information should be written in the “topic” section of the exclusive room area.

Library (Documents library)

Documents can be stored and shared. Members can add comments so that it is possible to have discussions about the documents. The library can be created by members as well as by the secretariat. Members should get approval to join from the secretariat (or the member who

created the library) when they wish to enter the library to refer to or store documents.

Individual-Discussion

This is a discussion area for limited members who want to discuss specific issues. The Individual-Discussion area could be created by members as well as by the secretariat. Members should obtain approval to join from the secretariat (or the member who created the individual-discussion) when they wish to enter the area to refer to or submit information.

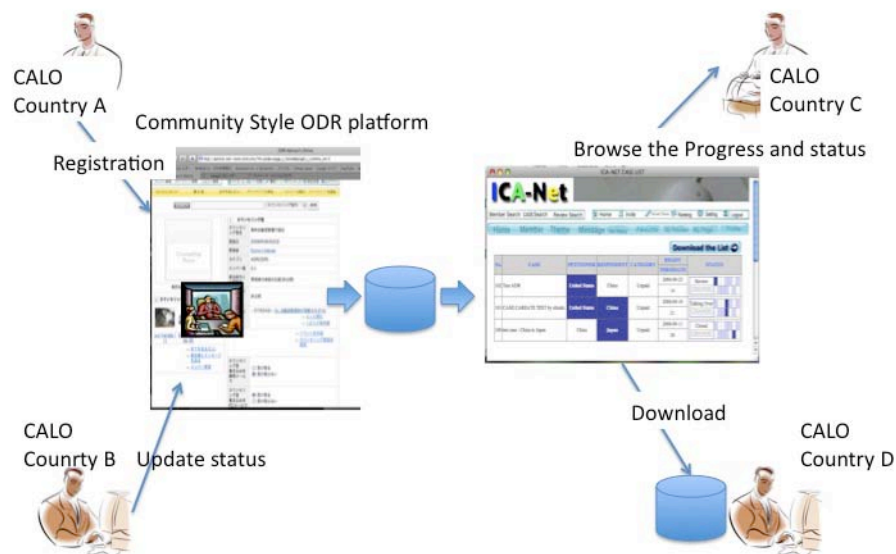
Case-room (complaint handling room)

This is an area for complaint handling between two countries or among related entities. A CALO from the side of the petitioner should create and invite a respondent CALO using the invitation button.

Exclusive room-List

This is a function for disclosing the status of a particular case that is being handled inside an exclusive “Case-room” to CALOs that have not joined such Case-rooms. The function allows ICA-Net members to know information such as the nature of complaints, who is a petitioner or a respondent, how many days have elapsed, and how frequently the CALO corresponded. This information will also be useful for future management of the system.

ICA-Net Community Style Platform



(c) Discussion at the first work group meeting

We shared the basic concept and background of ICA-Net, and introduced a trial system under development. The moderator suggested two points for discussion:

- 1) Laws, regulations or legal restrictions in each country related to complaint handling.
- 2) The balance between information management restrictions and efficient cooperation for complaint handling or law enforcement through ICA-Net.

Comments from members and answers:

A. The system

a. Security

(Issue)

SSL should be installed in addition to two-layer invitation security.

(Answers or status)

Done

b. Operation and Function

Will updates or invitations to the community be notified to our email boxes as well?

The system is designed to automatically notify recipients through email. Each email includes the URL that will direct

Members noted that the word, “CASE” is the same as the abbreviation for the Consumers Association of Singapore (CASE). To avoid confusion, the system should change the name of this community to lower case.

Is it possible to give a sequence or reference number to each case automatically?

Is it possible to retrieve information by searching according to the name of a business?

If multiple participants wish to use this system in a CALO, how do they share the account?

users to the log-on page once the hyper link is activated.

We modified the name of this function from “CASE” to “Exclusive room”. “Exclusive room” contains three types of areas, such as the “Case-room” to handle complaints, “Library” to store the documents to be shared, and “Individual-discussion” to hold discussions with limited members.

Technically it is feasible, but participants at the meeting felt that this subject requires further discussion on the implications of having a numbering system.

There exists such a function to retrieve information by searching for free words.

Technically, it is possible to add another field to retrieve information according to the name of a business. However, such changes will incur costs. The issue is funding.

The system is configured based on an open source platform that manages exclusivity with email and by the invitation method.

We prefer to use an individual email address as an ID at first. In the future, it is possible to issue a specific email address for each CALO. Several email addresses are possible as well.

If a CALO is going to have more than one user and share an address among them, the CALO should manage this with special care. As a matter of principle, each CALO should manage their users' addresses to maintain the same level of security.

B. Management rules

Who manages ICA-Net?

Tentatively, EC Network and ODR Room network will manage it.

Is data stored in each country?

All updating data is currently stored in a server located at NTT Data center, a Japanese major system integration service provider company. We should discuss this matter at our future meetings as well.

We should also discuss the policy of information sharing in view of each the policies of APEC and/or individual countries on such matters. We need to make it clear that any information collected from consumers or businesses could be shared between CALOs for the purpose of handling complaints.

We have to deliberate in our future meetings on the way information can be shared without breaching privacy protection policies of APEC and/or each country. We should take into account the concerns of each country regarding this matter.

We should discuss the complications of obtaining permission from a consumer or business when a CALO sends or receives personal information.

We have to consider the obstacles that each CALO will encounter if it needs to obtain prior consent in order to share

information for the purpose of managing complaints.

Members should also discuss the feasibility of putting in place a draft guideline for information handling in the community. For instance, we need to decide on the extent to which personal information can be written into the system.

In the event of transferring a complaint that includes personal data to another CALO in another country, how should each CALO manage the information? Do we need an agreement?

Is there any possibility for consumers or businesses to access the system directly?

The “Status of case proceedings” function seems to be difficult to use.

A guide will pop up on the screen once the user places the curser over the word. You do not need to remember the status. The status is just defined temporarily. It is possible to change based on subsequent discussions. It is also possible to define the complaint category.

The “Case-list” function seems to be very useful for annual reports.

We should discuss drafting Terms and Conditions regarding the use of this system to handle international complaints.

(d) Discussion at the second working group meeting

The results of use of the trial system from January 2009 were reviewed to

discuss issues for the future.

- Registered members

22 members and a system administrator joined before the second working group meeting.

No.	Participant	Entity
1	Administrator	-
2	Toshiko SAWADA	EC Network
3	Yuko Tonomura	EC Network
4	Mitch Chihara	NEC
5	Yutaka Ikeda	CICC
6	RYO IKAWA	METI
7	Hiroko Kawabata	CICC
8	Isara Ratapipat	Ministry of Commerce, Thailand
9	Ayumi Kodama	METI
10	Nobuyuki HAMANAKA	METI
11	Muhammad SHA'ANI bin Abdullah	National Consumer Complaints Centre, Malaysia
12	INDRANI THURASINGHAM	Consumer International, Malaysia
13	Eiichiro Mandai	ODR Room Network
14	Charles Underhill	Better Business Bureau, USA
15	Nguyen Manh Quyen	MOIT – VECITA, Vietnam
16	Ko Anada	SOGA URYU & ITOGA
17	SEAH Seng Choon	Consumer Association of Singapore (CASE)
18	Galland, Meny-yo, Ger	SOSA, Taiwan
19	Yoshihisa Hayakawa	Rikkyo University
20	Yuko KUSAMA	Rikkyo University
21	David Perdue	METI

- Theme

10 themes were written until 4 Mar. 2009

Agenda for the 2nd Meeting (2) (Nguyen Manh Quyen)

All screen shots above are expanded (Administrator)

Please confirm a new Exclusive room (Administrator)

You succeeded to join the Exclusive (Administrator)

The system confirms you to join or n (Administrator)

You could see a top page of the Excl (Administrator)

You could see another URL to the Exc (Administrator)

You could see your received message (Administrator)

save photo regarding "warning" on ex (Administrator)

Sorry, I mistakenly wrote in line 4) (Administrator)

- Exclusive room

Description	(number of comments)	(Name)	(Participants)
General	(18)	(General-QA)	(19)
Official or Unofficial documents	(4)	(Minutes)	(17)
Presentations and documents	(3)	(Presentation and documents for ERIA -WG2)	(9)
Useful Documents	(1)	(Useful Documents)	(18)
A Japanese consumer bought boots	(6)	Complaint Handling	(3)

- How did the members communicate through the system?

Starting by uploading photos at the first meeting accompanied with chatty comments, some members were greeting and enjoying writing comments. Later a member informed others that ICA-Net was featured in the news in a Japanese newspaper.

The Coordinating Institute, the CICC, stored all of the presentations delivered at the first meeting including large size data even over 18MB, which could not be sent via the ordinary email system. The institute also announced an arrangement for the second workshop in Singapore to share information.

A member submitted a memorandum containing minutes of a session in the first meeting to solicit comments from members. One member added useful comments on it and sent these. The final memorandum was in the Library exclusive room to be shared by all members.

- Complexity of the two-levels invitation method

The system adopts OpenPNE, which is the most adopted platform for SNS

in Japan. The OpenPNE supports two levels of security to users, which include:

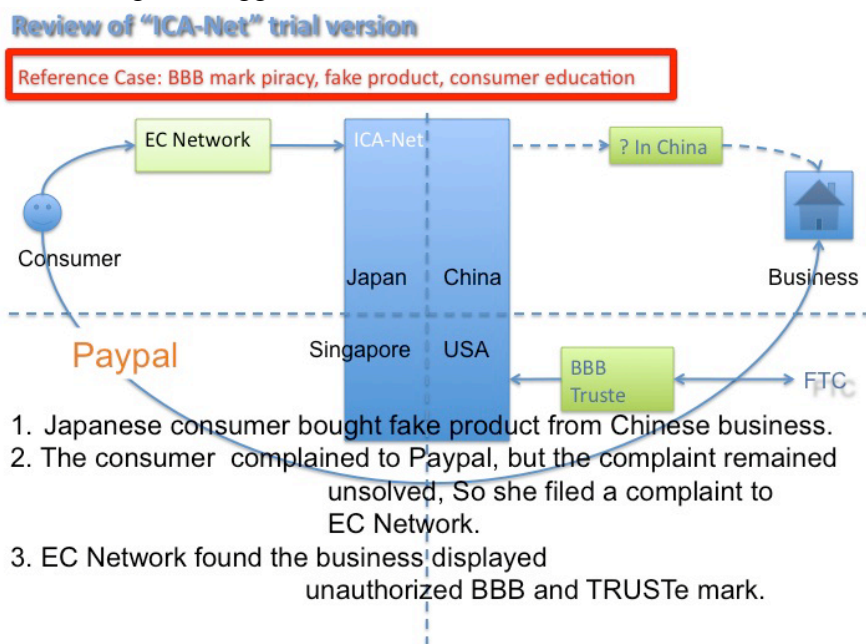
- a) The first level invitation layer, which does not allow someone to register without an invitation from a member or a system-administrator.
- b) The second level invitation layer, which does not allow access without approval by the owner-administrator of a virtual exclusive room to have a discussion.

For the first invitation layer, a system-administrator sends to an expected “user” an invitation email so that the “user” registers his/her account. The registration took time for some Japanese members since it confused them because they had already registered for another similar system in Japan.

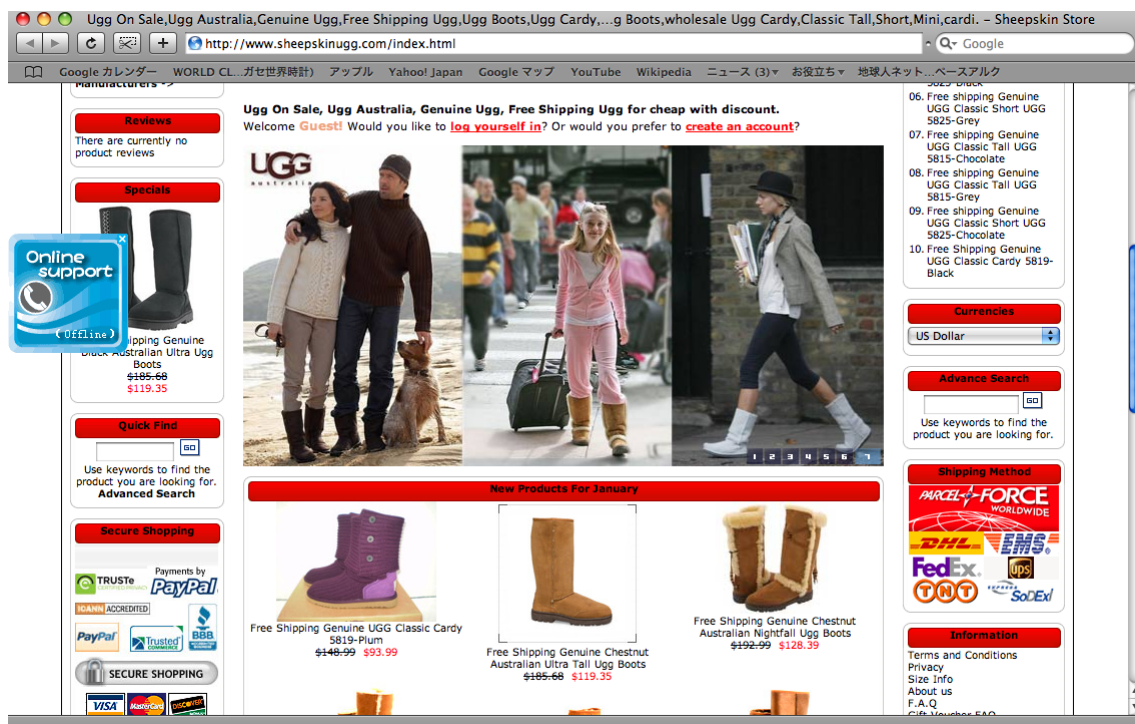
Members pointed out the complexity of the second invitation layer, which is the “Exclusive room”. The Exclusive room can define three types of secured virtual discussion spaces, such as the Case room for complaint handling, the Library for sharing documents, and Individual Discussion for discussions. All of these types of virtual rooms can be accessed with the approval of the owner. Virtual rooms can be recognized only after approval by the owner.

(e) An Example of a Case

The following is an example of a complaint we encountered which is both interesting and suggestive.



- A complainant (a Japanese consumer) bought two pairs of the well known brand-name Australian “UGG” boots, and paid through Paypal.
- However, the complainant received fake goods from China. Apparently, this complainant did not know that the business was located in China until he received the items because the physical address of the business was not shown on its website.
- The complainant negotiated with the business through the Resolution Center of Paypal, but the business insisted the goods were not fake and Paypal advised both parties to resolve this matter.
- The complainant wanted to resolve this dispute with Paypal’s assistance and did not want to pay for the counterfeit goods. Furthermore, he was dissatisfied with Paypal and claimed that Paypal should not have granted payment privileges to this business.
- Coincidentally, we found that the Trustmarks of both BBB and TRUSTe displayed on the site of this business.



So, EC Network contacted BBB to report the apparent fraudulent use of its seal on this site.

Reference Case: BBB mark piracy, fake product, consumer education

The screenshot shows the ICA-Net website interface. At the top, there's a navigation bar with links like 'Member Search', 'CASE Search', 'Review Search', 'Home', 'Invite', 'Recent Theme', 'Ranking', 'Setting', and 'Logout'. Below this is a yellow bar with 'CASE Top', 'Topic', 'Recommend', 'Join Exclusive', 'Introduce', and 'Leave CASE'. A blue bar below that contains 'Progress Management', 'Goto Exclusive room List', and 'Download the List'. A search bar is present with the text 'In this Exclusive Room'. The main content area is divided into two columns. The left column shows a 'Case Room' placeholder with the text 'Case Room' and 'BBB mark piracy'. The right column is titled 'Exclusive Room' and contains a table with details about the room.

Exclusive Room	
Exclusive Room 名	BBB mark piracy
opening date	2009/01/28
Manager	Yuko Tonomura
Category	Others
a number of members	3_
Condition and Policy	Need to be approved(Non-disclose)
Exclusive Room description	A Japanese consumer bought boots from a site. It appeared that he received goods from China and they were fake. BBB mark is posted on the top page of this site.
Exclusive Room topics	> 01 月30 日 ... BBB mark piracy(1) Read more

Below the table, there's a section for 'Exclusive Room member' with three profiles: Toshiko SAWA, Yuko Tonomura, and Charles Underhill.

- BBB does not offer its seal to businesses located outside North America and determined that the business was making fraudulent use of its Trustmark. The BBB legal department sent the business a cease and desist email immediately.
- EC Network also forwarded information on the fraudulent usage of the Trustmarks to TRUSTe.
- The business removed all the seals from its website on the next day.
- BBB also referred to the U.S. Federal Telecommunications Commission (FTC) to consider what action they might be able to take through the International Consumer Protection and Enforcement Network (ICPEN). However, the BBB indicated in the end that the business is not likely to be subjected to law enforcement.

This case raises the following points to be discussed.

- No CALO in China

Paypal, Singapore, is outside of Japanese jurisdiction. If there was a CALO in China, the CALO could provide the following relevant information regarding fraudulent cases:

- All legality in China of not disclosing the physical addresses of e-commerce businesses on their websites
- Rules about returning politics
- Dispute resolution
- Domestic law governing transaction(s).
- Trustmark, Privacy mark piracy

This is a B2B issue that Trustmark organizations cannot overlook. At this moment, the issue is not directly related to the theme of ICA-Net.

- Law enforcement and information sharing
 - This case raises the issue of the extent to which information on complaints, or information related to particular businesses, can be shared with law enforcement entities when CALOs receive information on fraudulent cases.
 - BBB forwarded to information in this case to the FTC. However, in some countries, sharing information with law enforcement entities is restricted by law.
 - ICPEN could be enforcement entity, if there is no other appropriate
 - entity.
 - We propose CALOs should serve as the first contact, collaborating
 - with law enforcement entities.
- Involvement of Paypal or other payment entity.
 - Paypal was used as means of settlement in this case. It is probably fair to say that a substantial percentage of consumers use Paypal when conducting cross-border e-commerce transactions.
 - Payment entities such as Paypal could play a role that complements the efforts of law enforcement entities. Since one of Paypal's chief functions is to transfer money, it could force a party to respond by withholding payment.
 - In Paypal's policy regarding intellectual property rights, transactions for counterfeit items and unauthorized replicas or copies of items are prohibited. Furthermore, the policy prohibits websites from selling goods or services that infringe on the intellectual property of a third party. They offer a "Buyer

Protection Program”, but they neither actively monitor contracting shops in a manner comparable to trustmark certifying organizations.

- We think if online settlement service providers such as Paypal joined in a complaint handling and dispute resolution network, we might provide better, more enhanced redress for consumers. We therefore recommend the involvement of online settlement service providers such as Paypal in ICA-Net. Without a doubt, the promotion of consumer education is also important.

The discussion suggested several points and issues.

- B2B issues, a trademark and brand name piracy as well as B2C issue

The “example” complaint contains two issues between business and business, in addition to the consumer's complaint. One is that the Trustmark of "BBB" and "TRUSTe", were pirated, and the other is that the rights for a particular brand name were infringed. Regarding the former issue, the site immediately removed the two marks although they did not respond directly to BBB. The BBB informs us that they have not registered their trust mark in China, and as such, it is uncertain whether BBB had the legal right to order the company to withdraw the mark, even if their threat was effective at least in this case. A member remarked that even if the mark was not registered, it is possible to bring it to the attention of authorities, if a law such as the "Act Against Unfair Competition" is established.

Several remarks were on the latter issue, such as regarding the fraudulent use of the brand name "UGG" on the name of the shop, the meaning of "genuine" for a kind of "sheep skin boot", whether or not to affirm that the company "advertised the fake as genuine", and that not enough materials were not collected to make a determination regarding possible illegality.

- The necessity of a CALO in China

The site did not display their physical address or phone number. That was one of the reasons that the complainant misunderstood, and believed that that the site was Australian and "genuine". The reality was that products were shipped from China, and the domain name information showed that the site was registered by a company located in Fujian.

We do not have information as to whether any law requires a site to display their address as in the case in Japan, or whether the law could enable a consumer to cancel a contract that is not effective in Japan. We could

possibly provide the consumer with more precise information if a CALO in China were to inform us regarding laws such as the "Act Against Unfair Competition" and trademark law. No objection among members was expressed to make an effort to extend ICA-Net. (Observers from China did not attend the session but joined another session on the next day.)

- Sharing information with regulation authorities

There was some debate over the direction of ICA-Net for the future and what ICA-Net could contribute within a situation where there is no CALO in China. One remark was that such as case should be reported to Chinese authorities based on the consumer's complaint and the illegality of the business' advertising. On the contrary, an argument was made that we should not report such cases lightly, without investigating the rationality of the complaint (due to the possibility of misunderstanding or carelessness by consumer). Another remark was that ICA-Net should not make decisions in advance on legal issues or advise at all on issues such as trademark infringement if the CALO has no lawyers on its staff. It was pointed out that ECC-net in Europe requires its member consumer institutes to have at least one lawyer on its staff. The Japanese Advertising Review Organization (JARO), a private organization, reports to authorities if an advertisement is apparently misleading (in most cases, a misleading advertisement can be obviously spotted). One person commented that advertisements are different from general consumer complaints, in which it is difficult to find the true facts.

The sharing of information should be explored through further discussion. Some countries including those in the EU area, prohibit informing consumers' complaints to the law enforcement authorities from the viewpoint of protecting data privacy. This was mentioned in the 1st work group meeting.

- The role of ICA-Net and its field of responsibility

Among the points made in the discussion above was that each CALO should establish a collaborative mechanism with authorities based on each country's domestic legal environment. As the ideal is that ICA-Net would lead to an improved environment in each country for effective complaint handling, identifying a CALO in China could be a good option. In addition, it would be better to invite authorities into the network of ICA-Net when CALOs and private institutes can not solve disputes on their own. ICPEN

was introduced as an existing network of enforcement authorities.

On the other hand, one opinion expressed was that the consumer could report a complaint directly to the Chinese authorities on their own in this case, if needed. This is because in cases such as this, where the merchant is a malicious one that is not contactable, it may be beyond the ability and out of the field of responsibility for ICA-Net to assist. ICA-Net, a private institute for handling complaints, could be effective for dealing with disputes where the problem occurred from communication issues such as language differences, but ICA-Net may not be well suited to effectively handle disputes involving malicious merchants. In response to this opinion, ICA-Net's purpose is chiefly to collect complaint information. In cases where collecting information or researching a given business' reputation reveals evidence of "viciousness" on the part of the suspected merchant, ICA-Net could then consider finding alternative ways to take the issue to the next step.

- Expectation for settlement operators

The complainant made the payment in this case with Paypal, a worldwide payment service provider. It is fair to say that Paypal is not the appropriate party to resolve the dispute in situations where it is possible to make contact with the business. However, there are many cases in cross-border transactions where it is only through the payment operator that it is possible to contact the business after losing communication by other means. Sharing information with those payment operators may therefore work effectively in these cases.

EC Network did not make contact with the business since we thought that they would not likely respond satisfactorily, but still, in our experience, we thought that they may answer to Paypal or a credit card company. For the reasons above, EC network, making a presentation on the case, proposed to encourage settlement operators to join ICA-Net. We should proceed proactively to cooperate with Paypal since Paypal is the only way of settlement in developing nations where VISA or Master Card are not common yet, or where Paypal without a credit card number is preferable because of the security (although large settlement companies can reverse charges in certain cases).

Along with the remarks above, arguments were made that placing too much responsibility on the payment operator may cause them to pass on the

charges to consumers in the end since they have no relation to the dispute. Furthermore, they may be reluctant to share negative information on their client businesses with others. But EC Network introduced Paypal is interested in ICA-Net while they have been communicating.

At this point, the illegality of transferring complaint information to Paypal was pointed out. This was discussed in the first meeting, when it was concluded that it is no problem to transfer the information as long as there is previous consent. Of course, transferring information without approval or consent must be illegal. In fact, in this case, EC Network transferred only a general outline of the case, without personal information and business information. As for this matter, it was proposed that ICA-net should implement a process to obtain approvals from consumers (or to confirm previously expressed consent) for sharing information with authorities for the purpose of handling complaints.

- Conclusion

As discussed above, we agreed that ICA-Net should be extended to countries that have not joined yet. In the same way, rules are needed to share privacy information or complaint information among CALOs, cooperating parties and authorities. There was major debate on the role and field of responsibility of ICA-Net. The issue is closely interlinked with how ICA-Net establishes relations with government authorities. More discussion is needed, along with further benchmarking to efforts of ECC-Net and entities in the United-States.

(3) The challenges for the future

It is preferable to improve the system and clarify the problems towards practical full-scale operation with actual cases. This should be accomplished through continuous and close communication throughout the system.

- Recruiting CALOs or candidates

The immediate priority is to increase the number of participants who have needs to handle cross-border complaints, and to establish operating guideline or rules adjusted to the established procedures according to which each country treats information.

- Involvement of legal professionals

It is necessarily to thoroughly discuss issues related to jurisdiction, law enforcement and civil redress to injured parties by illegal businesses.

Authenticity of complaints should also be confirmed legally.

- Sharing consumers' personal information of consumer or details of a complaint

The issue here is how we could establish procedures to transfer details of a complaint, including personal information, despite restrictions imposed by the APEC Privacy Framework or the Private Information Protection Law in Japan, which makes it mandatory to obtain approval from each person in advance.

- Sharing business information

On the contrary, we need to consider how we could transfer business information, which could contain trade secrets or internal intelligence.

We should also discuss about the organization of the system, including by looking at funding and operations currently provided voluntarily by private organizations.