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ALTERNATIVE DISPUTE RESOLUTION  
FOR CONSUMER TRANSACTIONS  
IN THE  
BORDERLESS ONLINE MARKETPLACE

MODERATORS:

HUGH STEVENSON, FEDERAL TRADE COMMISSION  
BARBARA WELLBERY, DEPARTMENT OF COMMERCE

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Reported By:

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1

2           Welcome Remarks

3                    Andy Pincus..... 5

4                    Robert Pitofsky..... 12

5

6           Presentations

7                    Carol Izumi..... 19

8                    Henry Perritt..... 31

9                    Charles Underhill..... 48

10                   Steve Abernethy..... 68

11                   James Burchetta..... 85

12                   Clyde Long .....106

13

14           Panel Discussion One .....141

15

16           Presentation

17                    John Bell.....173

18

19           Panel Discussion Two .....183

20

21           Panel Discussion Three .....235

22

23

24

25

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1 requires more decisive action from law enforcement.

2 So, with that thanks, I would like to turn i  
3 over to Charlie to talk more generally about the  
4 programs that the Better Business Bureau has.

5 MR. UNDERHILL: One should be taller than the  
6 bottle of water that sits in front of one's chair.

7 If you will pretend that I told you the  
8 obligatory humorous story and that you laughed  
9 appreciably, we'll save about three minutes and I can  
10 get on with this.

11 I want to start by kind of piggybacking on  
12 something that Hank said. The bureaus in our comments  
13 have made a point about the importance of kind of a  
14 three-legged stool in this whole global consumer  
15 protection arena, and as Hank said, one of them is a  
16 set of standards by which companies and consumers and  
17 dispute resolvers can measure the facts and  
18 circumstances in an individual case.

19 One of them obviously is an effective  
20 third-party dispute resolution mechanism, and one of  
21 them is some way for consumers to identify which  
22 companies have committed to these high standards of  
23 dispute resolution and high standards of business  
24 performance. So, we kind of see this as a three-legged  
25 stool and that it's very important that all three legs

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1 from today and given us some good meat to chew on and  
2 think about.

3 Now Hugh will introduce our next speaker.

4 MR. STEVENSON: The professor has exhorted us  
5 in government to goad and prod and flexible push, and  
6 we'll be doing that hopefully in our later panel  
7 discussions. We have a few more presentations, though,  
8 to put this in context, and our next speaker that I  
9 have the pleasure to introduce is Charlie Underhill,  
10 who is the senior vice president for dispute resolution  
11 at the Better Business Bureau, and this means he's in  
12 charge of a very large program.

13 The Better Business Bureaus in the United  
14 States and in Canada have a wealth of experience in  
15 dealing with consumer disputes. The professor  
16 identified a couple of things that I think make  
17 consumer disputes different, obviously we're dealing  
18 with a lot of low-dollar transactions, small-dollar  
19 transactions, and where the views of the dynamics of  
20 party autonomy may work differently than in other  
21 contexts, and the Better Business Bureaus have had some  
22 experience in this area. Indeed, they have handled  
23 consumer complaints and disputes, hundreds of thousands  
24 of them, in the consumer context millions of them, and  
25 initiated a number of new programs which people have

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1 mentioned as we're talking today about dealing with  
2 consumer complaints.

3           And I would like to take a moment also to  
4 acknowledge one contribution that they have made  
5 recently that -- mention of the consumer complaint  
6 handling makes this relevant -- that we last month  
7 announced a strategic alliance with the Better Business  
8 Bureaus and the Postal Inspection Service, the state  
9 attorneys general, along with a number of partners we  
10 already had, you know, Susan Grant's organization, I  
11 see her in the front here, and 90 Better Business  
12 Bureaus representing over 110 different Better Business  
13 Bureaus offices and cities had agreed to contribute  
14 consumer complaint data to what's called Consumer  
15 Sentinel, which is a joint database and law enforcement  
16 tool that is available online to hundreds of law  
17 enforcers and, in fact, 240 law enforcement agencies  
18 and offices in the United States and Canada that can  
19 use this information to take action against internet  
20 fraud and deception, and this is an initiative we  
21 appreciate very much.

22           One of the things that's interesting about  
23 consumer complaints is that the line is sometimes  
24 clear, sometimes not between what is just a problem  
25 between legitimate parties and what is something that

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1 be there, because they support one another.

2 That said, the conference organizers have asked  
3 me to discuss the BBB Online's offline experience with  
4 ADR. I was asked to provide some real world examples  
5 of how at least one consumer dispute resolution  
6 mechanism is currently operating and the nature of the  
7 caseload that we're handling. And finally, I hope to  
8 be able to set a stage for our discussions today and  
9 tomorrow on consumer complaint handling in a borderless  
10 online marketplace.

11 Let's start by making some general observations  
12 about consumer complaints in the offline environment,  
13 and I'm going to reference here some studies that many  
14 of you are probably familiar with, sort of seminal  
15 studies that were done by a TARP, that's the Technical  
16 Assistance Research Program, back in 1979 and again in  
17 1986 for the U.S. Department of -- or the U.S. Office  
18 of Consumer Affairs.

19 The TARP study had some interesting  
20 observations. I'm going to quote them here from an  
21 article by John Goodman, who's the president of TARP,  
22 that was published in Competitive Advantage in June of  
23 last year.

24 "On the average, 50 percent of consumers will  
25 complain about a problem to a front-line person,"

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1     however you define a front-line person, "but only 1 to  
2     5 percent of consumers would escalate a complaint to a  
3     local manager or corporate office," although for higher  
4     ticket items, the percentage of people who do that is a  
5     little bit higher. "Problems which result in out-of-  
6     pocket monetary loss have high complaint rates," which  
7     is understandable, "while mistreatment, quality and  
8     incompetence problems invoke only about a 5 to 30  
9     percent complaint rate."

10           On the average, TARP found twice as many people  
11     talk about a bad experience in a commercial transaction  
12     than they do about a good experience, and sort of  
13     following that, TARP noted that it was five times as  
14     expensive for a company to win a new customer as to  
15     keep a current customer.

16           And finally, TARP found -- and this is  
17     interesting to this discussion -- that customers who  
18     complained and are subsequently satisfied are 8 percent  
19     more loyal than if they'd never had a problem with the  
20     company to begin with.

21           When North Americans do have complaints and are  
22     looking for third-party assistance to help get those  
23     problems resolved, they most frequently turn to the  
24     Better Business Bureau. Let me give you some idea of  
25     the BBB system's current complaint-handling activity.

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1           BBB Autoline is the bureau dispute resolution  
2 mechanism operating under federal warranty legislation,  
3 FTC rules, state lemon laws and manufacturer  
4 guidelines. During 1999, BBB Autoline handled 33,000  
5 cases. Of those initial contacts, 11,400, that's 34  
6 percent, of these cases were ineligible for some  
7 reason. They were ineligible or a significant portion  
8 of these people withdrew their claim after they'd  
9 presented it but before they did all the filings  
10 because the complaint somehow got settled, and that's  
11 confirmed in independent survey research that's done  
12 annually for the program for the Federal Trade  
13 Commission.

14           Of the remaining 21,600 cases, 5700, that's 26  
15 percent, were resolved through an arbitrator's formal  
16 decision, and roughly 74 percent, that's 15,900, were  
17 settled through a process of mediation. Over the  
18 lifetime of the BBB Autoline program, the BBB system  
19 has handled an astonishing 1.6 million individual  
20 consumer warranty disputes, and as I've indicated, the  
21 majority of these cases were resolved to a customer's  
22 satisfaction through a process of mediation, but  
23 233,600 were resolved through formal hearings before  
24 BBB trained volunteer arbitrators serving in local  
25 communities in the United States. That's the BBB

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1 Autoline program.

2 Local BBB offices are the principal point of  
3 contact for most consumer complaints. During 1999, the  
4 BBB system handled slightly in excess of 3 million  
5 consumer requests for complaint advice or assistance,  
6 representing a 10 percent increase over the same  
7 activity in 1998. These complaint contacts resulted in  
8 420,000 formal complaint cases opened by local BBBs.  
9 That's also a 10 percent increase. Of those,  
10 approximately 66 percent were resolved, 8 percent were  
11 answered but not resolved, 18 percent were not answered  
12 by companies after repeated requests from the BBB, and  
13 8 percent were not pursuable by the BBB because they're  
14 not the kinds of cases that BBBs would handle.

15 To give you a better feel for a typical offline  
16 case, we'll follow the BBB Autoline case from its  
17 inception all the way through the BBB process. I have  
18 chosen this because I think that within this process  
19 there are a number of things that can be applied in the  
20 cross-border online discussions we will be having today  
21 and tomorrow.

22 First, a little background on the program  
23 itself. In 1975 in the U.S., consumer dissatisfaction  
24 with product warranties, and most specifically with  
25 automobile warranties, had reached a boiling point.

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1 After several key studies of the problem, Congress  
2 passed the Magnuson-Moss Product Warranty Act. The Act  
3 created standards for full and limited warranties  
4 according to coverages that each of these afforded and  
5 required companies to describe each warranty as either  
6 full or limited.

7 It provided that any warranties had to be  
8 available in a variety of different ways for consumer  
9 inspection prior to sale. And finally, and most  
10 important for our discussions here, the Act recognizes  
11 that a good deal of the consumer dissatisfaction over  
12 warranties was really consumer dissatisfaction over  
13 interpretations of warranty terms and the inability of  
14 the court system to provide consumers with fast,  
15 inexpensive third-party assistance. So, Congress  
16 included in the Act a provision designed to encourage  
17 warranters to resolve warranty disputes through  
18 informal dispute resolution.

19 The Act specified that if a company established  
20 a dispute resolution mechanism and if it met the  
21 requirements of the FTC, then that mechanism could be  
22 incorporated into a product warranty, and if it was  
23 incorporated into the warranty, then the consumer could  
24 not bring a case into court until they had first used  
25 -- into court under the warranty act until they had

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1 first used the informal mechanism.

2 Coupled with the passage of state lemon laws,  
3 most of which made reference to the FTC's informal  
4 dispute resolution procedures, I don't believe there's  
5 any single piece of consumer legislation that has had  
6 such a profound effect on consumer-business landscape  
7 and warranties as had the Magnuson-Moss Warranty Act.  
8 We call a provision of Magnuson-Moss prior resort,  
9 meaning that as a consumer you have to resort to the  
10 mechanism before you can use the provisions of law.  
11 You'll hear it discussed today also as exhaustion of  
12 remedies, you exhaust other available options before  
13 resorting to the courts.

14 BBB Autoline has over 34 manufacturers that  
15 participate in some or all states, manufacturer brands,  
16 and that includes General Motors and Saturn and most of  
17 the major imports. Ford, Chrysler and Toyota offer  
18 their own separate programs that are not connected with  
19 the BBB.

20 Manufacturers are precommitted to resolve  
21 disputes through the BBB, and if a case has to be  
22 arbitrated, the arbitrator's decision is not binding on  
23 the consumer unless the consumer accepts the decision,  
24 and if they do, then both the manufacturer and the  
25 consumer are bound by its terms.

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1           So, let's go to a typical case. You're the  
2 consumer and you probably fit this model. You've  
3 experienced a problem with your car, it's manifested  
4 itself in one of two ways, either as a single problem  
5 that keeps recurring or as a number of separate,  
6 apparently unconnected problems that keep you coming  
7 back to the dealer over and over again. Your level of  
8 frustration builds in direct proportion to the number  
9 of times you've taken your car back. Your car is  
10 relatively new, it's still under warranty, and every  
11 month your frustration increases because you're making  
12 lease or loan payments on that vehicle.

13           You've probably discussed your problem with  
14 either the service manager or manufacturer's  
15 representatives, and they've offered to assist you by  
16 having another repair attempt. Finally, you reach the  
17 breaking point, and as the studies show, the breaking  
18 points are different for different consumers, and you  
19 get hold of the Better Business Bureau.

20           How you find the BBB holds some lessons for us.  
21 As a result of the warranty legislation, manufacturers  
22 have incorporated information on informal dispute  
23 resolution into the warranty material that accompanies  
24 the vehicle, so you may have found the BBB Autoline  
25 number there. And this goes to a point that Hank has

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1 made about how important it is to be able to link the  
2 customer with the dispute mechanism at the point of the  
3 dispute.

4 The legislation also requires manufacturers to  
5 make information on their mechanisms available when a  
6 dispute arises. Repeated independent audits of our  
7 mechanism and of the Ford, Chrysler and Toyota  
8 mechanisms have noted that -- have encouraged the  
9 manufacturers to put this information at the service  
10 desks in dealerships, and I have to say that this is  
11 almost never done, and that's the real point of contact  
12 where the consumer is most likely to have a dispute.

13 So, most consumers find their way to Autoline  
14 either through the warranty material or because they  
15 call the Better Business Bureau because they think  
16 that's the place they need to go with a complaint, and  
17 the bureau will refer them to one of these programs.

18 We cover most U.S. consumers, so depending on  
19 the individual manufacturer, we may handle a case  
20 originating anywhere from the U.S. Virgin Islands and  
21 Puerto Rico all the way over to Hawaii and from the  
22 U.S.-Mexican border all the way up to Alaska. There's  
23 a separate program, by the way, called the Canadian  
24 Motor Vehicle Arbitration Program that does kind of  
25 similar functions through the BBB and other dispute

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1 resolution providers in Canada.

2 We'll mail you a whole package of materials  
3 when you contact us, including the Autoline rules, a  
4 copy of the standards and remedies for your individual  
5 state's lemon laws, copy of program summaries, a whole  
6 bunch of material to assist you in filing your claim  
7 and will take your claim over the phone. When we mail  
8 you this package, we also notify the manufacturer that  
9 a case has been filed and the name and the basic  
10 information on the complaint. Many manufacturers are  
11 excellent at rapidly responding to these case  
12 summaries, and it's not unusual for a manufacturer to  
13 contact the customer and perhaps even offer a  
14 settlement before the paperwork has actually arrived  
15 from the BBB through the snail mail.

16 We use a very sophisticated document imaging  
17 system to create electronic copies of all claim forms,  
18 program documents and other supporting materials.  
19 Within the first ten days of your complaint filing,  
20 your BBB case specialist, whose name you got and  
21 telephone number when you initially called us, is going  
22 to contact you and the manufacturer to try to work out  
23 some kind of an informal settlement or to better define  
24 the nature of the dispute.

25 Because, as I had indicated earlier, FTC rules

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1     require that a case be handled from beginning to end in  
2     40 calendar days, not business days, we need to  
3     schedule your case for an arbitration hearing starting  
4     about day 17. We offer you the opportunity as a  
5     consumer to present your case in a number of ways. Our  
6     process assumes you want to present your case in person  
7     to an arbitrator. A manufacturer may elect to  
8     participate by telephone or in writing, but you can  
9     participate if you want to in person.

10            If you elect to present your case by telephone,  
11     the manufacturer can't appear in person. They have to  
12     appear either by telephone or in writing. And if you  
13     choose just to submit your dispute in writing, the  
14     manufacturer can only respond by submitting in writing.

15            You've elected to have your case heard by an  
16     in-person hearing, so we'll schedule a hearing for you  
17     at a local BBB office nearest your home, and there  
18     150-some offices and branches in the U.S., so we're  
19     pretty close to most consumers.

20            In some cases, we'll arrange to have your  
21     vehicle inspected prior to the hearing, and that will  
22     be done at no cost to you, and the results of the  
23     inspection by an independent technical expert will be  
24     provided to you and the company and the arbitrator  
25     prior to the hearing. The arbitrator can also request

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1 an inspection after the hearing if he or she believes  
2 that there's some problem that would help be clarified  
3 by a technical inspection.

4 When the appointed hour arrives, your hearing  
5 is going to take place at the local office. The  
6 manufacturer may participate by telephone. Most  
7 hearings take 60 to 90 minutes. The arbitrator, a  
8 volunteer trained by the BBB, will have been provided  
9 as much information as we have been able to gather from  
10 the parties prior to the hearing; copies of sale and  
11 lease agreements, record of the customer's ownership of  
12 the vehicle, repair orders, et cetera, and you can  
13 present any evidence that you want, and so can the  
14 manufacturer.

15 If you are requesting a repurchase of your  
16 vehicle, the arbitrator will in most cases inspect the  
17 condition of the vehicle at the time of the hearing,  
18 and that inspection may include a test drive of the  
19 vehicle if there's some particular problem that you're  
20 alleging is recurring and the arbitrator wants to get  
21 firsthand view of that.

22 When the arbitrator has determined that they  
23 have gotten all the evidence, they will close the  
24 hearing, and they have a very short time frame in which  
25 to issue a written decision and the reasoning for their



1 decision. When that comes to us, we send it to the  
2 parties, and you have ten days from the date you get  
3 our mailing to accept or reject the decision. Let's  
4 assume that you've won your case and you've decided to  
5 accept the decision, there's been an order that the  
6 vehicle be repurchased. Well, in that case, the  
7 manufacturer will normally have 30 days from the date  
8 of the decision to actually do all the work necessary  
9 to repurchase the vehicle. That's normally done at the  
10 dealership, and that's probably going to conclude your  
11 case.

12 One of my major functions here is to provide  
13 you with a segue from offline stuff to online stuff in  
14 the ADR world. Let me begin by noting that the  
15 internet has already profoundly changed the way we do  
16 business, for the BBB system offline and online  
17 emerging at a pretty breakneck pace, and while Hank is  
18 correct that it's -- we've noted this and we're taking  
19 steps to correct it -- it's difficult to find the BBB  
20 complaint form on the BBB Online site, on the BBB.org  
21 site, which is the principal site that consumers come  
22 to, the complaint form is prominent on the splash page.  
23 It's basically file a BBB complaint other than a new  
24 car, file a BBB complaint on a car, file a complaint on  
25 a charity, and those are right on the splash page.

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1 People are finding that.

2 As I mentioned earlier, the BBB system handled  
3 420,000 complaints last year. During the first five  
4 months of 2000, we took 67,000 complaints from  
5 consumers using the online complaint form. If that  
6 five-month number is extrapolated over 12 months, we  
7 will have taken 160,000 online case filings for the  
8 year 2000, and that's assuming that it stays at an  
9 average of about 13,000 per month. It's not. It's  
10 increasing almost exponentially every month as more and  
11 more consumers come online and find the form. So, 40  
12 percent of the bureau system's 1999 caseload, by the  
13 year 2001, will probably be coming online.

14 A growing number of the Autoline cases are  
15 filed online as an increasing number of consumers gain  
16 access to the internet. More and more consumers are  
17 communicating with our BBB Autoline staff by e-mail  
18 rather than by telephone, and that's eliminating one of  
19 our real problems, which is playing phone tag trying to  
20 catch busy, working consumers during the business day.

21 Most consumers have access to fax machines  
22 today, and when a consumer faxes documents to us,  
23 they're really not faxing documents. They're engaged  
24 in one part of a document imaging system, because their  
25 stuff is coming right into our computers and into our

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1 document imaging system.

2 I expect that very shortly the consumers and  
3 manufacturers will be able to have direct access to all  
4 of the material that they filed on an individual case,  
5 as will the arbitrators. Through our website,  
6 consumers can obtain copies of their own state's lemon  
7 laws, standards and remedies, and review participating  
8 manufacturers' program summaries and can obtain all  
9 kinds of information about the BBB program. And  
10 finally, the BBB Online dispute resolution process for  
11 the privacy program, which is now online, was built  
12 from its inception to be an entirely online process.

13 Let me come back to the TARP statistics I  
14 mentioned at the beginning and ask, will they still  
15 have validity in this new online marketplace? It's my  
16 educated guess, given the one-click ease with which  
17 consumers can bring a dissatisfaction to someone's  
18 attention, that more consumers will do so.

19 I'm also convinced that many more consumers  
20 will find ways to escalate unresolved disputes, either  
21 to companies or third parties. And finally, I'm  
22 absolutely convinced the TARP statistics regarding the  
23 impact of a negative customer experience are probably  
24 already outdated as consumers post their  
25 dissatisfactions in chat rooms for the world to see and

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1 create the best awful problem with manufacturer A  
2 website, which will come up every time you do a search.

3 TARP action, which is now known as e-satisfy  
4 and which sort of reflects the change in their  
5 environment, they moved from offline to an online  
6 world, just completed a benchmark study in 1999 in Dune  
7 for the International Consumer Service Association, and  
8 they have some observations about how things are  
9 different in the online environment.

10 Online customers have a higher expectation than  
11 offline customers for the time it takes a company to  
12 respond to them to and resolve their complaints.  
13 Companies are not only meeting online -- companies are  
14 not currently meeting online customer expectations.  
15 Only 36 percent of online customers are completely  
16 satisfied with their electronic contact experience.  
17 Only 40 percent of online contacts are resolved with  
18 one contact, and almost half require a telephone call  
19 from the consumer to resolve the problem.

20 Poor handling of online contacts creates at  
21 least 30 percent lower loyalty among the two-thirds of  
22 online contacts who aren't satisfied. And finally,  
23 poor handling of online contacts results in a high  
24 level of negative word of mouth.

25 This survey, this e-satisfy survey is available

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1 through the International Consumer Service Association,  
2 and you can order it online.

3 This is not particularly good news for  
4 companies operating in the exploding e-commerce  
5 marketplace; however, it does speak to the real  
6 importance of our collective work. It seems that what  
7 we're going to do is going to be needed.

8 There are many challenges we face in building a  
9 global mechanism. Some of them are so obvious --  
10 language barriers, cultural differences, levels of  
11 technological sophistication -- that they are hardly  
12 worth mentioning. We will discuss them at great  
13 length, but they are just a fact of life. Others are  
14 less obvious but may prove more difficult.

15 The first and foremost one, I believe, and  
16 borrowing from the "Field of Dreams" analogy, "If you  
17 build it, they can come, and in droves," and that in my  
18 judgment may not be the first challenge of global ADR  
19 mechanisms, but it will ultimately be the most  
20 significant. There have been a number of experiments  
21 in online dispute resolution. Hank referred to some of  
22 them; you will hear three in the next presentation.  
23 All of these have a solid intellectually designed  
24 framework.

25 Overall, online mechanisms, however, are only

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1 beginning to be tested for the consumer arena in any  
2 significant volume of casework, and I can tell you from  
3 firsthand offline experience that when you combine an  
4 organization with a 99 percent public name recognition,  
5 like the BBB, with a group of major consumer product  
6 manufacturers in a dispute resolution mechanism  
7 overseen by a major federal regulatory agency like the  
8 FTC, you can indeed get a quarter of a million case  
9 filings in 12 months, as we did during the mid-1980s  
10 just in the Autoline program, well before anybody had  
11 heard of the Worldwide Web.

12 While technology can assist in making caseloads  
13 manageable, it also has a real and positive potential  
14 to make ADR more accessible, and at some point, however  
15 effective the mechanisms are, dispute resolution is  
16 going to involve the active intervention of a third  
17 party by real people at some point, and the costs of  
18 doing that have the potential of being significant.

19 Second, thoughtful regulatory involvement can  
20 provide a fertile medium for ADR growth without huge  
21 budgetary commitments. As I've said, the best possible  
22 example of this judgment from a cost-benefits  
23 standpoint had to be the ADR provisions of Mag-Moss.  
24 We need to look for similar exhaustion of remedies  
25 approaches online.

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1           Third, responsible businesses will do the right  
2 thing with the right incentives, and that's another  
3 point Hank's made. A number of businesses will do the  
4 right thing because it's good for business and it's  
5 good for its customers, and they will do it without any  
6 need for regulation. A good example of that is the  
7 companies that have participated in a variety of these  
8 different programs, including the BBB Online program,  
9 and the Children's Advertising Review Program in our  
10 National Advertising Division.

11           Others will do the right thing when the rules  
12 that require it are clear and focus on desired outcomes  
13 and not trying to define line by line what the process  
14 ought to be, allowing latitude for business, for form  
15 to fit the forces, as Professor Frank Sander would say,  
16 forces particularly in the cross-border consumer  
17 process, which relies on contractual provisions, and  
18 legal enforcement mechanisms to compel participation in  
19 a legally binding mechanism by itself is likely  
20 impractical and unworkable. It has certainly caused  
21 considerable consumer controversy in the U.S. You will  
22 probably hear more about this issue over the next  
23 couple of days.

24           Ultimately, given the relatively small value of  
25 disputes which are likely to make up the bulk of the

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1 consumer caseload, I don't believe either businesses or  
2 consumers will want to expend the financial resources  
3 which might be necessary to compel one reluctant party  
4 to arbitrate or to bring a country's enforcement  
5 mechanisms to bear to collect on an unsatisfied  
6 judgment.

7 In closing, let me say that the BBB system in  
8 the U.S. and Canada can provide a model of how consumer  
9 dispute resolution programs operate offline and could  
10 also be an excellent laboratory in which new concepts  
11 and technologies can be tested with a significant body  
12 of real consumer disputes. We're actively exploring  
13 partnerships with other groups around the globe, and  
14 we're anxious to lend our over 85 years of experience  
15 and self-regulation are the goals of this meeting.

16 Thank you.

17 (Applause.)

18 MS. WELLBERY: Thank you, Charlie, for the  
19 excellent presentation.

20 We are now going to take a 15-minute break.  
21 I'd like -- if I could ask you to come back at 10 to  
22 11:00. We have a very busy schedule, so -- I know  
23 everybody needs to get up and move. I also want to  
24 point out that Pronet link will be webcasting the two  
25 days of the workshop. The exact time of the webcasting

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