



Global Business Dialogue on Electronic Commerce

GBDe 2006 Issue Group

**Consumer Confidence
“Privacy, Trust Mark and ADR”**

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1. Introduction

Since its foundation in 1999, the GBDe has analyzed the elements to eliminate the anxiety and risk on the part of consumers and to build trust for the growth of e-commerce. This effort to the past recommendations for governments and non-governmental organizations to represent consumer interests.

The GBDe argues that five elements are essential to win consumer confidence:

1. Trustmark
2. Alternative Dispute Resolution (ADR)
3. Privacy Protection
4. Secure Payment, and
5. Reliable Network.

Among these five, the Consumer Confidence Issue Group has focused on the first three elements and issued combined recommendations at the GBDe’s Tokyo Summit in 2001. After this Summit, the GBDe concentrated on advocating the recommendations through dialogue with various parties involved in consumer confidence. However, taking recent development in this area into account, it has been agreed that it would be timely to issue additional recommendations.

2. Privacy

The GBDe has adopted two basic positions in recommending policies related to e-commerce. First, to facilitate the growth of e-commerce, the GBDe has been seeking a uniform regulatory and competitive environment. Second, to avoid the burden of unnecessary regulations, it has been seeking a self-regulatory framework with emphasis on “best practice”.

In protecting personal information, the GBDe has been consistent with these two basic positions. In the 2001 Tokyo Recommendations, the GBDe set its own guidelines for personal information protection with reference to the OECD Guidelines. The GBDe guidelines were then promoted, especially within APEC, which awarded GBDe guest status in 2004. APEC launched its own “APEC Privacy Framework” in 2005. Before that, in 1995, the EU issued its “EU Directive”. This has influenced legislative efforts not only among EU member countries but also those outside of the EU. Even though uniformity of regulation has not been achieved, the GBDe assesses the current situation as satisfactory and far better than the regulatory patchwork approach the GBDe has sought to avoid since its foundation.

The next step in protecting privacy is to evaluate the regulatory efforts so far put into practice. For this purpose, it is important for governments who have implemented privacy protection regulations to share their experience with other governments who have not yet fully taken this step. In essence, they should seek the “best practice in regulation”. This will lead to better regulations and improved privacy protection.

As to self-regulation, two developments have come to our attention: Privacy Mark in Japan and Generally Accepted Privacy Principles (GAPP) in Canada and the United States.

Privacy Mark in Japan started as a self-regulatory effort in 1997. The Japanese government enacted the Personal Information Protection Law in 2004. This legislation attracted huge interest, and as a result, more than five thousand businesses have been certified for the Privacy Mark.

GAPP was co-developed by the American Institute of Certified Public Accountants (AICPA) and the Canadian Institute of Chartered Accountants (CICA).

It should be noted that both Privacy Mark and GAPP extend beyond online e-commerce to cover all types of business transactions involving personal information. Also in terms of scope and structure, both present striking similarities, which might be an encouraging sign that businesses can adapt very similar approaches even when operating under different regulatory frameworks.

Best practice gets its power from third-party audit and certification, which are similar in function to ISO certification and the audit of financial data. Businesses face risk in choosing a vendor to process customers’ personal information. But using a vendor that

has undergone third party audit and certification reduces the risk of that choice. Also, this enhances the security for consumers.

In addition, governments could promote these measures by awarding contracts to companies who practice third party audits and certification for personal privacy protection.

But self-regulatory efforts face a challenge: the shortage of well-trained specialists. This is more the case for small to medium sized enterprises, since their training costs are relatively higher than for larger enterprises. One possible solution for this shortage is a standardized training program for professional qualification. The qualification itself and the employment opportunities that should come with it will be good incentives for training. Also, a formal training program is not only more cost effective but also provides justification for governments or other authorities to subsidize training for SMEs.

Thus, the GBDe has observed significant progress in the development of a uniform regulatory framework and a self-regulatory mechanism. However, we see still one more hurdle: cross-border activity. As business processes become global, there will be more need for cross-border processing of personal information. However, government efforts have so far focused on domestic operations. The GBDe believes that consumers are entitled to the same level of privacy protection in cross-border transactions.

Fortunately, some international forums have begun to take up this issue. The GBDe welcomes this move and will seek to contribute.

3. Trustmark

The GBDe established its basic position on trustmarks in 2001 with the publication of its Guideline on Trustmark (TM). To facilitate this Guideline, the GBDe has assisted efforts for cooperation among TM programs of each country in various ways. A uniform environment has not yet been achieved globally; however, through voluntary efforts by the private sector, various TM program organizations were established and developed with their own style in many countries and sectors to promote best practices.

3.1. Current Status

This year, the GBDe conducted a global survey to find out how TM service providers have actually worked, based on the information collected from their websites. An overview of 27 TM providers was obtained. Of these 27, 13 are in North America, 7 in Europe, and 7 in the Asia/Pacific region.

(1) Management Base

When categorizing these TM providers in terms of organizational form and management base, there are 2 main groups as follows:

A. Non-Profit Organization (+ Government Assistance) Model

In Europe and the Asia/Pacific, most TM programs are based upon the Non-Profit Organization (+ Government Assistance) model. Meanwhile in North America, most organizations, except BBB Online and TRUSTe, are managed on a commercial basis.

Most bodies in the non-profit model have a close connection with their governments. However, their assistance is provided in different ways and in varying degrees. Some organizations are covered by public funds for the considerable portion of their management expenses, and other organizations just share the data.

B. Private Profit-Making Model

In North America, eight organizations were established by investment of venture capital, etc. and now provide TM service as a venture business. Two are operated by a security business and by a major online advertising business. In Europe, one TM service is provided in the United Kingdom only for offline advertisement. In Japan, a TM service will soon be provided by a subsidiary of a major Internet advertising agency.

(1) Guarantee

The most common standard for certifying a TM, or what is guaranteed by a TM, is to follow certain Code of Conduct. Most of those of the Model A mentioned above apply this standard and offer an Alternative Dispute Resolution (ADR) service for consumer disputes.

Organizations categorized in Model B have their own certification standard in line with their specialized service. Some bodies are specialized for personal data protection. Some identify and guarantee a site itself as a secured one. Some provide their TM services only to those who agree to ADR settlement in advance. Others provide their TM services to a business which clears financial health criteria.

(2) Other Information Services

Member stores of a major shopping mall and of a credit card company fulfill the required criteria and receive certification from a third party. This is not what is called a “trustmark”, but this mechanism can provide some level of confidence to consumers and should be focused on. This service has played a similar role to TM in a broad sense and has contributed to market expansion.

One of major roles of TM is to show business data to consumers plainly and to provide an indication of a proper business. Some TM program bodies provide a rating service for a business’ customer service, etc. These efforts can provide an indication for making consumers’ own judgment and promote best practices by using a business’ reputation. This type of service is expected to grow further.

3.2. Assessment and Issues

It is heartening that independent efforts have developed, in both profit-making and non-profit organizations, in each country and each area. Meanwhile, some new issues as well as remaining problems are emerging.

(1) Assessment of Trustmarks and Information Provision to Consumers

Because of the variety of TMs in the market an investigation is needed to determine whether consumers can identify correctly what each TM certifies.

In addition, the GBDe believes now is a right time to give an assessment of TMs' roles for promoting e-commerce and expanding its market base, from viewpoints of consumers as well as small-and-medium sized businesses (SMBs), considering the actual situation of each nation and area. With regard to these efforts, consumer organizations are expected to take initiative.

(2) Release of Leading Practices

In more countries, TM will be introduced as an e-commerce promotion measure. Releasing what is to be learned from the developed service practices, management problems, etc., makes it possible to accelerate progress towards developing similar global environments for competition and regulation.

(3) Measures for Cross-Border Transactions

In this survey, most of TM services, especially the ones provided by Model A, are confined to a single country or area. The first step for cross-border business growth is, as GBDe has recommended so far, to facilitate the certification partnership between local TM program organizations.

In order to facilitate this effort, TM programs organized by bodies such as direct marketing associations, chambers of commerce, and industry of each country should fully utilize their linkages with overseas partnership bodies.

As for the partnership among TM service providers, the Asia Trustmark Alliance (ATA), founded by four Asian countries, works very actively. A conference has been held annually since the adoption of a Memorandum of Understanding (MOU) in 2003. The GBDe has provided as much support as possible to their activities. As for cooperation at a global level, after some years of discussion, a Global Trustmark Alliance (GTA) is expected to be formed in the near future.

Meanwhile, some services managed in Model B are provided for the entire world. The providers use the English language, which is an advantage when targeting a global audience. In addition, overseas development can be achieved by a base at home, which is a significant advantage for online business. VeriSign and TRUSTe have developed their services globally by establishing bases in each country and localizing each of them.

As cross-border e-commerce has been facilitated, the GBDe has continued to pay attention to such movements and make efforts in obtaining the cooperation of governments and related organizations in order to consolidate the framework for building confidence of consumers.

4. ADR

The GBDe has focused on the potential of ADR as an easy and prompt settlement option for e-commerce disputes between countries with different legal systems, without going to court. For this reason, the GBDe created the Guideline on ADR in 2003. This guideline was issued in the form of recommendations to each of e-commerce businesses; ADR service providers, and governments. The GBDe conducted a direct dialogue with Consumers International for over three years before reaching an agreement. Since then, the guideline has served as a standard when introducing or assessing ADR services.

4.1. Current Status

1. ADR associated with Trustmark

In the GBDe survey on TM service providers, it was asked whether an ADR program is offered or not. Out of 27 organizations mentioned above, 18 bodies provide an ADR service. Most of them have created organized linkages between their Code of Conduct, TM, and ADR programs.

2. ADR other than Trustmark

The survey also asked about ADR services provided independently, and categorized the services into two models as follows.

- A. ADR programs provided at the initiative of government agencies or consumer organizations as an extension of a complaint handling program
- B. Online ADR (ODR) offering a partially automated dispute resolution system (software) on a website

As for Model B, the survey conducted by the International Conflict Resolution Center, University of Melbourne (2003) shows that there are 115 websites on ODR in the world. B2C e-commerce disputes are handled on 24 of these 115 websites.

Efforts for Cross-Border Transactions

ADR program cooperation has been discussed in the global alliance of TM program organizations. As for bilateral cooperation, two cases are found: North America (BBB Online) and Japan (ECOM) started in 2001 plus North America (BBB Online), and the United Kingdom (TrustUK) started in 2005. Especially in the latter case, the global ADR mechanism will be built effectively by using the technology of the ODR platform.

4.2. Assessment and Issues

(1) Roles of ADR

The combination of Code of Conduct, TM, and ADR is the best practice model, and appears to be an ideal model for promoting e-commerce. This is expected to continue to be introduced in many countries.

In analysing the performance of ADR services introduced after the issue of the GBDe Recommendation on ADR in 2003, the following significant developments can be observed:

1. The best practice is spread in the market by educating the businesses involved through settlement of each dispute.
2. Self-regulation by other businesses is enhanced by publishing complaint-handling cases.
3. Resolution of new complaints leads to the creation a new code of conduct. Rules are flexibly modified without regulation and control.

(2) Dispute Handling and Information-Gathering Function

Under present circumstances, many “ordinary” businesses are located laterally to “good” businesses certified with TM and have active transactions with consumers. Most complaints handled from consumers are about these “ordinary” businesses.

A mission of an ADR program other than TM, especially in Model A mentioned above, is to respond to such actual needs and to bring relief to consumers. This means that ADR service providers may receive a complaint from a victim of a fraudulent transaction. In this case, it is difficult for private ADR providers with no legal force to reach a settlement. However, the information received by ADR service providers is very useful for government agencies and law enforcement bodies. A mechanism for forwarding information promptly from ADR service providers to the related agencies and bodies is recommended so authorities can take action if required.

(3) Issues in Cross-Border Transactions

An immediate problem is to promote ADR program cooperation among multiple nations as an extension of bilateral cooperation.

The ideal mechanism is that a complaint handling and/or ADR is available as a “one-stop” service to consumers without constraints like different languages and legal systems. A discussion of the related issues, from a long-term perspective, is required.

In cross-border transactions, the efforts to detect a fraudulent transaction are more important. It is very difficult to detect fraud targeting an overseas consumer, even if it is a rudimentary trick, because of the jurisdiction barrier. It is also difficult to take measures to prevent the damage from spreading such as shutdown of a website. Some immediate measures, involving the relevant governments and law enforcement agencies, should be implemented for this situation.

(4) Sustainability

In case of Model A, assistance from a business is difficult to provide because business incomes such as a TM fee cannot be expected and because incentives for a business are poor. Therefore, providing a management base, or financial resources, to keep providing ADR services becomes the biggest problem.

There are many cases where a complaint-handling program is covered by public funds for the purpose of consumer protection. However, there are very few cases where governments provide assistance for ADR services and cross-border business issues. It is

necessary to discuss how these services can be offered continuously by governments, businesses and consumer organizations.

Meanwhile, in Model B, the service for handling a large number of disputes semi-automatically has been implemented successfully by a business linked to a large-scale auction site. Thus, a business idea, technology, flexibility, and maneuverability brought by the private sector can be utilized to solve cross-border disputes. The GBDe should continue to focus on the possibility and do something for partnership projects.

5. Other Service for Confidence-Building

Another purpose of this survey is to examine other services related to consumer confidence other than TM and ADR.

5.1. Escrow Service

The basic mechanism of an escrow service is to receive money for payment from a buyer and to wait for a seller to send out an article to the buyer. The seller cannot receive the money until it is confirmed that the buyer received the goods. It is a service to reduce a risk that a seller cannot receive the payment at the same time to avoid the situation “that a buyer does not receive an item even though he/she paid the price”: the greatest risk of a prepayment method.

Recently in Japan, an escrow company was established by joint investment of some major businesses, which was triggered by the success of auctions via mobile phone. There are other cases where an operating company of an auction site and a distribution company offer an escrow service. In the United States, an independent escrow company (escrow.com) has offered this service since 1999.

5.2. Insurance and Transaction Guarantee

The paid money is refunded to a consumer only when certain terms are fulfilled. This service is effective as an “ex-post” relief to reduce the risks of a prepayment method. The most common condition among “certain terms” is, as mentioned above, the case where “an item has not been sent even though payment has been completed”. The typical service is “compensation” offered in auction sites. This is a similar service to “insurance” that a user bears widely and at a limited level. In some cases, an auction site provides the service internally; in other cases, the service is offered by a tie-up with an insurance company.

"The transaction guarantee" service that is combined with TM and ADR services has also been established. Some of these services are not limited to fraud cases. The pioneers are Guardian e-Commerce and Web Assured in the United States, and Trusted Shops in Germany. Recently Buysafe, which tied-up with an auction site, is growing and, using their service, a consumer can apply for a guarantee by item unit. A similar service (TradeSafe) will be started in Japan in future. These services are designed and provided through the creativity of the private sector. The beneficiaries or users pay the service fee.

From a viewpoint of confidence building in the market, in addition to TM and ADR, the services provided by such businesses should also be focused on. Especially when providing cross-border service, the GBDe hopes that a difference of legal systems among countries will not hamper the competitive development of business especially when providing cross-border service.

6. Recommendations

6.1. Privacy

1. Governments, who have adopted a regulatory framework for protection of personal information, whether by legislation or other means, should share their experiences with other governments. Studying the outcomes of these policies, particularly the unintended effects, will be of great value in developing measures to protect personal information.
2. Results so far show that self-regulation based on best practice is more effective when combined with audit and certification by an independent third party. Government can promote this type of self-regulation by giving preferred status to certified businesses in awarding contracts.
3. Governments and businesses should work together to harmonize rules and regulations for cross-border transfer of personal information.

6.2. Trustmark

1. As for the Trustmark programs which have been started and developed within the past five years, every government should promote establishment and offer developmental support on best practices and management issues for those countries planning to introduce such programs.
2. Trustmark service providers and consumer organizations should share experiences and seek to foster improved information provision of their services to enable consumers to easily understand the differences between providers.

6.3. ADR (Alternative Dispute Resolution)

1. Every government should develop a mechanism for law enforcement bodies to effectively use the information ADR and complaint-handling organizations collect. Furthermore, law enforcement bodies in every country should make an effort to cooperate with each other effectively on a global basis.
2. ADR service providers must also continue to pursue ongoing global cooperation and contribute to carrying out seamless cooperation amongst various nations. Governments should discuss ways in which to provide cooperation of law enforcement bodies and ADR providers and should assist them to promote these efforts.

3. In order for countries to reference other country ADR systems, governments should publish the statistics and case studies of ADR services, especially concerning best practices and management issues.
4. Every government should take care not to hamper the development of private confidence-building businesses offering global services because of the differences of legal systems from one country to another.

In order to carry out these recommendations firmly and effectively, the GBDe will continue to offer opportunities for discussion to trustmark service providers, ADR service providers, governments, consumer organizations and other related organizations.

The GBDe strongly hopes that this discussion will increase the importance and awareness of a global network for building trust in the e-commerce market.