

**FEASIBILITY STUDIES FOR NEW STANDARDS  
RELATING TO  
CONSUMERS AND ELECTRONIC COMMERCE**

Allan McChesney, February 14, 2000  
for the Office of Consumer Affairs, Industry Canada

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## FEASIBILITY STUDIES FOR NEW STANDARDS RELATING TO CONSUMERS AND ELECTRONIC COMMERCE

Allan McChesney<sup>1</sup>, February 14, 2000  
for the Office of Consumer Affairs, Industry Canada

### *PREFACE: The Studies Conducted for Industry Canada*

Industry Canada has supported significant research and collaboration on voluntary codes, and has published important guidance materials related to voluntary compliance regimes. Industry Canada has also been a key player in the development of formal standards governing practices important to consumers, notably the CSA Privacy Standard. Recently, Industry Canada has supported research into electronic commerce and the development of principles that pertain to consumers. Drawing upon these experiences and interests, in 1999 Industry Canada's Office of Consumers Affairs (OCA) commissioned studies into the feasibility of standards for business-consumer relations in the electronic marketplace. This OCA initiative focuses on *the feasibility of three standards for the electronic marketplace*:

- (1) *a standard pertaining to complaints handling*
- (2) *a standard pertaining to dispute resolution*
- (3) *a standard pertaining to the development and use of voluntary codes*

The purpose of the studies is to explore the practicality, desirability and utility of developing the standards envisaged. The studies are not intended to propose draft terms for standards. The object is to enhance the capacity for Canadian governments, consumer standards representatives, private sector standards representatives and others, to determine whether such electronic commerce standards should be initiated or supported by Canada.

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To introduce the three studies, the current document presents an Overview of issues common to each study. The document begins with Executive Summaries of the Overview and of each feasibility study.

### ***EXECUTIVE SUMMARY of the Overview Document***

Three studies have been conducted for Industry Canada on the feasibility of standards related to consumer relations in e-commerce. The Overview document examines circumstances and issues common to all of the studies. The documents are intended to assist stakeholders in their assessment of whether such standards should be initiated or supported by Canada.

The main hindrance to the growth of e-commerce is a lack of consumer trust. Most Canadian consumers do not shop online, for reasons such as concern for personal and financial privacy and security, the inability to assess goods and services before purchase, the difficulty of judging the reliability of online merchants, worries about being overcharged and worries about returns and refunds. A 1999 multi-country test survey by Consumers International showed a significant ratio of online merchants to be unreliable with respect to providing information or even the goods ordered. An e-commerce standard for business-consumer relations could assist consumers to compare attributes of online merchants and might attract shoppers to marketers that display a standard's online compliance trustmark.

Attention to e-commerce consumer relations has resulted in, *inter alia*, draft OECD *Consumer Protection Guidelines for Electronic Commerce*, Canada's *Principles of Consumer Protection for Electronic Commerce - A Canadian Framework*, initiatives by the ISO Consumer Policy Committee and ventures such as BBBOnLine and WebTrust aimed at assisting electronic merchants to win consumers' trust. Canadians who do shop online give most of their business to US websites. That raises concerns about both the difficulty of transborder regulation and the loss of opportunity for Canadian companies. When problems arise from online purchases across frontiers, customers cannot easily obtain redress and regulators are reluctant to intervene.

Businesses often prefer the flexibility of voluntary arrangements such as codes and standards. Many advocate a self-regulatory approach for Internet marketing, based on industry-generated voluntary codes. Unlike the latter, standards framed by a Standards Development Organization (SDO) represent a consensus among merchant, consumer and regulatory representatives. This quality may enhance a standard's credibility for online shoppers and businesses. A standards regime, involving registration and auditing, would give consumers assurance that participating online firms follow good practices for protecting personal privacy, for instance, or effective procedures for management of complaints. An example of a standard that has some application to e-commerce and was developed jointly by business, government and consumer representatives, is the CSA Privacy Standard (1996).

Evolution in e-commerce is so rapid that it would be hard for legislation and regulators to keep pace and to avoid stifling innovation, but consumer activists say that marketers' self-regulation is unacceptable and will not create consumer confidence. Voluntary e-commerce standards could

reassure consumers and decrease pressure for regulatory action. Existing legislation would continue to underpin a standard, to deal with contract formation and cancellations as well as fraud. It may not be worthwhile for consumers to use legal process to pursue minor disputes with online vendors. Many such problems could be avoided or handled better by an effective system of standards for electronic commerce. The national and worldwide standards system operates across boundaries, and was designed to do so.

A workable e-commerce standard, linked to a credible and affordable digital trustmark, could gain recognition and credibility for an online seller. That development would be most helpful to smaller merchants. Large enterprises may not feel the same need, but may support standards for e-commerce to encourage online business generally. Millions of consumers will not buy through the Net unless they are sure that their interests are adequately covered.

Another cause for business hesitation about new standards is the possible cost, in terms of money and personnel time to become and remain in compliance. Companies must weigh the expense against the cost of foregone business. Perhaps e-commerce marketers could be permitted to undertake a supplementary ISO 9000 agreement relevant to one or more e-commerce standards. For firms that already participate in the ISO program, being able to show compliance with an e-commerce standard as part of a regular ISO 9000 process could reduce the expense of signing on to e-commerce standards.

For governments, a strong e-commerce standards regime could reduce potential regulatory work and help to overcome cross-jurisdictional regulatory conflicts. Standards may give needed flexibility to respond to the swift changes in e-commerce. Weak practice codes or standards would, however, reduce the chance of consumer buy-in and heighten the possibility that governments would need to step in with regulatory action. For commercial interests, being able to influence the design of a standard through representation on multi-party standards bodies would seem preferable to inviting legislation through inaction.

A national Standards Development Organization (SDO) such as those in Canada and Australia would seem the logical venue for developing standards for e-commerce. The involvement of consumer representation in standards development would add to the public and consumer trust attached to a delivered standard. Canada could adopt a standard developed by a like-minded country or by an international entity, or Canada could produce a standard that others may wish to adopt. A shortcoming of recent Australian initiatives on managing complaints and disputes, and work in the UK on voluntary codes, is that they do not deal specifically with electronic commerce.

One likely candidate for development of an e-commerce consumer standard is the Canadian Standards Association (CSA International). CSA gained relevant experience during development of the CSA Privacy Standard. One reason CSA was approached to develop that standard was that stakeholders, including business and consumers, perceived CSA as neutral. Development of standards for e-commerce could be done in tandem with international work, as is occurring with respect to e-commerce practice principles being examined by Canada and by the Organization for Economic Cooperation and Development.

Development of one or more consumer protection standards for e-commerce appears to be a feasible and worthwhile objective. Once adopted, that standard should ideally linked to a minimum number of Canadian trustmarks, preferably only one. There is a rapid growth in the number of services offering to enroll online merchants in certification programs and to place a related logo on their websites. But the wide variety of verification seals can increase consumers' confusion. The available e-commerce voluntary codes and seals of reliability vary widely in substance and significance, though their purveyors all make optimistic claims. Some web seal services provide minimal information or protection to consumers, but are relatively cheap for merchants. Other schemes may be more useful for consumers, but place much greater financial and administrative burdens on merchants.

Credible, effective, affordable e-commerce standards that enter the field early to foster best practices could build consumer awareness and confidence. Canadian businesses and governments may want to take steps to ensure that consumers in Canada and abroad associate such standards with online merchants based in Canada.

## ***EXECUTIVE SUMMARY of The Feasibility of A Standard Pertaining To Complaints Handling In Electronic Commerce***

This study looks at the feasibility of developing a national and/or international standard pertaining to the handling of consumer complaints arising from electronic commerce.

Lack of consumer confidence about the safety of shopping electronically is the main barrier to growth of the electronic marketplace. Another is consumers' uncertainty about being able to obtain refunds or redress if goods or services are undelivered or unsatisfactory, or if other matters go awry. Consumer concerns were borne out by a survey made public in September 1999 by Consumers International. Test data showed that a significant ratio of online merchants responded unreasonably to inquiries, did not provide information such as contact data that would help consumers to pursue complaints, or acted in ways that would normally lead to consumer complaints, such as failing to deliver ordered items.

Many business groups would prefer to deal with e-commerce complaints through voluntary regimes designed and controlled by industry. Private sector voluntary efforts for handling of e-commerce complaints are unlikely to generate strong confidence from consumer representatives, however. The initiatives lack strong consumer input and may not involve serious consequences for firms that do not provide ethical or fair complaints handling outcomes.

Many consumers would opt for strict application of existing consumer protection and contract law and would demand new laws pertaining specifically to e-commerce, to protect customer interests respecting privacy, security and redress. The speed of change in electronic marketing may call into question the wisdom of enacting more laws too soon, however. A standard on complaints handling could assist in dealing with the rapid pace of change, although achieving a standard may also be a slow process.

For e-commerce, a consensus standard developed through an SDO may be an acceptable compromise option. A standard could aid in resolving overlaps of jurisdiction between countries and among federal, provincial and territorial authorities. A serious and common problem in e-commerce, for consumers and regulators, is how to deal with complaints and achieve appropriate outcomes when vendor and consumer are resident in different countries. Governments may refrain from primary regulatory activity if e-commerce retailers shows willingness and capacity to offer reasonable remedies for consumers, including remedies for complaints arising from both small and large purchases.

Efficient internal complaints handling, compatible with or modeled on a recognized standard, can benefit merchants of any size, by increasing consumer confidence in the vendor's reliability. Feedback from systematic handling of complaints can help to shape an organization's e-commerce marketing. When it is easy to file complaints and these are handled effectively and fairly, customers are more likely to remain loyal to a product, service or merchant. A plethora of weak voluntary practices or codes for handling of complaints could harm the image of electronic shopping. Notorious treatment of online customers by marketers who lack good complaints

management may deter consumers from the Internet - or pressure regulators to institute regulation.

Standards may be more attractive to regulators than less formal voluntary arrangements, because the former encourage greater uniformity and are tied to a world system that assists Canada to meet its international obligations. Moreover, governments, business and consumers would have direct input during development of a standard on complaints handling through an official SDO.

Canadian businesses will want to ensure that consumers associate Canadian online merchants with fair and workable regimes for complaints handling. A competitive advantage may ensue for those first online with a sensible set of e-commerce standards on complaints. A standard could permit gradations of commitment and variations in complaints handling systems among business participants, depending on their differing sizes and capacities and what they sell.

It is feasible for Canada to promote a standards approach to address the handling of consumer complaints arising from e-commerce marketing and transactions. A standard would be a realistic addition to law, acknowledging the limitations of law and voluntary arrangements in dealing with trans-border e-commerce. The 1995 Australian Standard on complaints handling is one logical foundation for an international standard adapted to e-commerce and is being considered as a basis for ISO work on a global standard. But the Standard does not cover e-commerce. Canada could work with Australia and others toward a specialized or supplementary standard on the handling of e-commerce consumer complaints. Canada should probably devote more of its resources, however, to developing e-commerce standards fulfilling other needs.

A general standard on e-commerce voluntary codes (contemplated in a separate feasibility study) ought to refer to minimum acceptable attributes of a complaints handling regime, among other features. To address consumer reluctance toward shopping online and to encourage complaints handling practices that can build customer confidence, a standard covering e-commerce consumer complaints is advisable but should preferably be developed as part of an overall e-commerce standard. That was the approach taken in 1999 in the draft Australian standard on e-commerce and in the Canadian *Framework Principles* on e-commerce.

***EXECUTIVE SUMMARY of The Feasibility of A Standard Pertaining To  
Dispute Resolution In Electronic Commerce***

The paper looks at the feasibility of developing a national and/or international standard pertaining to the management of disputes that flow from consumer complaints in the electronic marketplace.

One hindrance to growth of the electronic marketplace is the lack of consumer confidence about being able to obtain a remedy if a complaint about a transaction, marketer, product or service cannot be settled amicably with a merchant. For any merchant, two advisable elements of a management system for consumer complaints are measures to prevent complaints from escalating into unsettled conflicts and a reasonable mechanism through which such disputes can be resolved when they do occur. If that external mechanism meets a recognized standard, this can increase consumer trust in the mechanism's capability as well as enhance the reputation of the merchant. Survey evidence, especially that released by Consumers International in 1999, shows that consumer concern about getting complaints settled is realistic.

The uncertainty of being able to attain resolution of a complaint related to an electronic transaction is magnified when the buying and selling parties are situated in different countries. A standard on dispute resolution related to e-commerce, if adopted by authorities and companies in many places, could aid in overcoming possible conflict among federal, provincial, and territorial jurisdictions and between national jurisdictions.

The development of dispute resolution provisions in many Canadian, Australian and UK voluntary instruments, including in standards, is an indication of the need for and feasibility of a standard on disputes management for e-commerce. International interest in the development of such provisions has also been occurring within the ISO and OECD. Canada's multi-stakeholder *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework* offers voluntary guidance on both effective and affordable complaints handling and reliable dispute resolution. It also expresses the need "to develop appropriate standards for dispute resolution mechanisms" related to e-commerce.

A voluntary standard on dispute resolution may be flexible enough to deal with rapid change in e-commerce but credible enough to influence governments to forego enacting unwelcome legislation. A standard would provide a menu of best practices to help online marketers and reassure hesitant shoppers. For merchants, a dispute resolution standard for e-commerce could yield valuable access to tools and knowledge of a specialized nature, such as software and expert advice on mediation and conciliation.

Other business arguments in favour of a standard on dispute resolution, as compared to regulation and to less formal voluntary practices, include "preservation of relationships, reduction of costs and time, confidentiality, encouragement of appropriate solutions, durability of agreements, choice and control of process, and the development of a corporate culture that is "dispute aware" and therefore looking to nip problems in the bud". (Allan Fels, Chairman, Australian Competition and Consumer Commission, "Launch of the Australian Standard - *Guide for the Prevention, Handling and Resolution of Disputes*, page 3).

A standard on disputes management may be more attractive to regulators than less formal voluntary arrangements, because it would encourage more widespread consistency in the treatment of consumer interests and help Canada to meet its international obligations. A standard on disputes management for e-commerce could reduce pressure to enact and apply new legislation to protect consumers.

Commercial and non-profit ventures offering dispute resolution services related to e-commerce are either not strong enough (from the consumer perspective), nor applicable/available to enough consumers to provide satisfactory protection to consumers in e-commerce. The eResolution initiative is promising as an alternative, particularly during the potentially lengthy span before consensus on an e-commerce standard could be developed.

A standard to address resolution of disputes arising from consumer complaints in e-commerce is feasible. If a standard on dispute resolution related to e-commerce were developed under a national standards system, the process would include business input, consumer and government representation. The involvement of consumer and government representation would add to the credibility of the standard.

Canada could work with other countries to develop and/or promote an e-commerce standard on dispute resolution, but Canada should consider drafting its own national standard, based on many sources.

If a decision were taken to develop a standard dealing with the resolution of consumer disputes occurring in e-commerce, at least four possible outcomes may be pondered: (a) a standard devoted to dispute resolution in e-commerce situations; (b) an e-commerce standard that combines all elements of complaints and disputes management; (c) a general e-commerce standard, with a section devoted to dispute resolution; (d) a general dispute resolution standard which has a section or supplement devoted to adjustments needed for e-commerce.

Negotiation of option (a) might lead to a separate e-commerce standard on dispute resolution, or to option (b), given that dispute resolution is combined with complaints handling provisions in Principle 5 of the Canadian *Principles*. The writer suggests that option (c) may be even more feasible, given the precedent provided by the *Principles* Framework itself. Dispute resolution principles would be important in a comprehensive e-commerce standard that could act as a benchmark for voluntary codes pertaining to electronic transactions. That possibility is the subject of the third feasibility study.

Among sources to draw on for a dispute resolution standard pertaining to consumers and e-commerce are the Canadian *Principles* for consumer protection in e-commerce, Standards Australia's newly published standard on dispute resolution, the British Standard on complaints management, the Australian draft Best Practices Model for e-commerce, the UK Web Trader scheme and Canada's Voluntary Codes Guide.

***EXECUTIVE SUMMARY of The Feasibility of A Standard Pertaining to the Development and Implementation of Voluntary Codes for Electronic Commerce***

This study canvasses the feasibility of a standard to provide guidance on establishing and implementing voluntary codes on business-to-consumer practices in electronic commerce.

A panoply of pledges and practice codes is being advertised by electronic sellers, but most such offers were not created via multipartite consensus, as a standard would be. Nor are they tied to a system of compliance assurance. It is hard for consumers to judge the strength and veracity of the promises. A rising number of voluntary pledges and codes is anticipated from merchants who operate online, in response to the continuing distrust and discomfort that consumers express and display regarding Internet shopping.

The variety of promises made by online merchants and by services offering to certify identities or attributes can be confusing to consumers. Publicity is occasionally given to incidents in which merchants violate codes of practice, yet suffer no consequences from the trustmark service. Such fiascos further confuse consumers and merchants alike and justify the shaky image that many hold of the electronic marketplace. E-commerce will blossom only when consumers can sense real protections in the areas of privacy, security, reliability and redress for complaints.

Although Internet shopping is increasing, poll results, statements from consumer rights advocates and the relatively slow speed of retail market growth online indicate that consumers are not willing to step up to the plate without more reliable rules and referees. There is currently no established measure against which to gauge the appropriateness or credibility of the increasingly wide range and variety of voluntary promises from Internet marketers. In other fields of commerce and industry, one method for ensuring that the management and other practices of different companies can be both improved and compared is to establish standards against which claims and practices can be measured. It would be desirable and feasible for Canada to develop standards covering voluntary codes of practice for consumer relations in e-commerce.

A large part of a standard on codes of practice applicable to e-commerce would address matters common to other forms of marketing. As well, the standard might deal with special circumstances in the electronic marketplace, such as the difficulty of knowing whom one is dealing with at the other end of the line. Other elements could include provisions on remedying consumer complaints, and provisions dealing with personal and financial privacy and data security.

The feasibility of developing a standard in Canada on voluntary codes for business-to-consumer practices is evidenced by a number of recent developments. Detailed guidance on how to establish and maintain an effective voluntary code is given in the Voluntary Codes Guide published by Industry Canada in 1998. A Canadian Framework of Principles for good business practices and consumer protection by online merchants was published in November 1999. The Principles form a compromise generated by stakeholders representing consumers, business and governments, and are in harmony with existing voluntary codes of key industry sectors.

In October 1999, a draft Best Practice Model (BPM) for business-to-consumer practices in electronic commerce was released for public consultation in Australia. The draft provisions describe minimum requirements related to e-commerce transactions, covering most of the areas addressed by the Canadian Framework Principles. In addition, the BPM, being a draft standard, contains sections dealing with periodic review of the anticipated standard and with compliance assurance measures.

The Web Trader Scheme of the Consumers Association of the UK, a code of practice for online traders, operates in many respects like a standard. Vetted UK companies that adhere to the code display the Web Trader logo at their websites. The firms agree to be subject to random checks, to consumer monitoring, and to possible loss of the logo and other consequences in the event of unresolved non-compliance.

Depending on the style of standard desired, standards development organizations, with the support and participation of multiple stakeholders, could use any of the above-noted documents as a basis from which to work. More likely, a combination of elements from these and other sources would be selected. The OECD Guidelines on consumers and e-commerce would be a general backdrop for this development process. In addition, developers of a standard could look at exploration by the UK Office of Fair Trading on the idea of a "core standard" for good consumer trading practices.)

Looking along the spectrum, if the desired emphasis is on matters pertaining to the formation, maintenance, monitoring and review of codes (including compliance assurance and use/abuse of online logos) the Voluntary Codes Guide would be the best starting point. Aspects peculiar to business-to-consumer practices in e-commerce would need to be blended in. If, in addition, those pursuing a standard wished the standard to give strong guidance on consumer protection and confidence-building practices, they could steer closer to the Framework Principles or to the Australian draft model. Or the standard's developers could begin with one of the latter two instruments before adding wisdom from the Voluntary Codes Guide on procedural issues.

The coordinator for development of a standard in Australia is Standards Australia. The most logical developer in Canada would be CSA International (CSA), partly because of its successful development of the 1996 CSA Privacy Standard. Although the participation of the CSA is not assured, a standard aimed at reassuring online consumers and merchants could benefit from the trust and familiarity that the CSA label enjoys with consumers and businesses in Canada, thus making development of the standard more feasible.

Electronic commerce still lacks the degree of comfort and satisfaction for consumers, or the record of success for businesses, that would support rapid growth. A respected standard offering guidance to a wide range of voluntary codes could contribute to enhancement of the climate for cautious consumers. Canadian businesses and legislators might want Canada to develop a voluntary codes standard for e-commerce as a way to bolster the presence and competitiveness of Canadian merchants in the online marketplace. These factors help to make feasible the development of a Canadian standard on voluntary codes targeted at business-to-consumer practices in electronic commerce.

**FEASIBILITY STUDIES FOR NEW STANDARDS RELATING TO  
CONSUMERS AND ELECTRONIC COMMERCE – OVERVIEW**

**An Overview of Issues Common to All Three Studies**

Allan McChesney, February 14, 2000  
for the Office of Consumer Affairs, Industry Canada

**1. THE STUDIES BEING CONDUCTED FOR INDUSTRY CANADA**

Industry Canada has supported significant research and collaboration on voluntary codes, and has published important guidance materials related to voluntary compliance regimes. Industry Canada has also been a key player in the development of formal standards governing practices important to consumers, notably the CSA Privacy Standard. Recently, Industry Canada has supported research into electronic commerce and the development of principles that pertain to consumers. Drawing upon these experiences and interests, in 1999 Industry Canada's Office of Consumer Affairs (OCA) commissioned studies into the feasibility of standards for business-consumer relations in the electronic marketplace. This OCA initiative focuses on *the feasibility of three standards for the electronic marketplace*:

- (1) *a standard pertaining to complaints handling*
- (2) *a standard pertaining to dispute resolution*
- (3) *a standard pertaining to the development and use of voluntary codes*

The purpose of the studies is to explore the practicality, desirability and utility of developing the standards envisaged. The studies are not intended to propose draft terms for standards. The object is to enhance the capacity for Canadian governments, consumer standards representatives, private sector standards representatives and others, to determine whether such electronic commerce standards should be initiated or supported by Canada.

**2. THE BACKGROUND OF THE STANDARDS FEASIBILITY STUDIES**

**2.1 Relevant Features of the Electronic Marketplace**

Consumers are increasingly turning to the Internet to seek information about goods and services, and to a lesser extent, to make purchases. In comparison to traditional retailing, however, it is often harder to gauge the reliability of an online merchant's claims, or to assess the quality of products and services being sold. The consumer cannot obtain a first-hand impression of the seller, nor of the seller's premises, nor of the offered products and services.

Data released in September 1999 by Consumers International (CI) confirmed that consumers have good reason to be wary about electronic

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shopping.<sup>1</sup><http://www.oneworld.org/consumers/campaigns/> by clicking on "electronic commerce". CI's multi-country test survey revealed that a worrying proportion of online merchants were unreliable when it came to delivery of good and services or giving refunds. Consumer organizations in eleven industrialised countries (Canada not among them) ordered items from websites in many countries and then returned most of the goods. The vendors' sites chosen were those of established traders and were sites that customers could find easily. Among other things, the study found that one-tenth of the ordered items never arrived and that 73 percent of traders failed to divulge crucial contract terms. The CI survey results gave credence to the nervousness expressed when consumers were previously polled about electronic transactions:<sup>2</sup>

The Interactive Services Association (ISA) reported a Georgia Tech poll of Internet users showing that "privacy has become the number one consumer concern...".<sup>3</sup> Similar conclusions were reported from a canvass of consumer attitudes and behaviour conducted on behalf of BBBOnline, a subsidiary of the Council of Better Business Bureaus ... The latter survey ... indicated that businesses could increase consumer confidence in shopping online by addressing two key concerns, security of payments and the reliability of businesses.<sup>4</sup> ... TRUSTe reported that 76% of Internet users expressed concern over sites monitoring their browsing on the Internet, and that 70% worried about making purchases online.<sup>5</sup>

If a product or service purchased through the Internet is not received, or gives rise to hidden costs, or is judged by a consumer to be unsatisfactory in some way, the difficulty of obtaining satisfactory redress may render recourse illusory. Legal actions can be costly and complicated for any cross-jurisdictional dispute, and the complexities are exacerbated for transactions via e-mail or the Web. Governments are playing catch-up when it comes to devising cross-border or reciprocal regulatory regimes to protect consumers, all at a time when public services have been generally downsized.

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<sup>1</sup><sup>2</sup> The study is called "Consumers@shopping: An international comparative study of electronic commerce" and is available at:

<sup>2</sup><sup>3</sup> The quotation below is from Allan McChesney, *Voluntary Practices and Standards for Consumer Relations in Electronic Commerce* (1998/1999), unpublished research study for the Office of Consumer Affairs, Industry Canada, 13-14.

<sup>3</sup> ISA website, March 1998 (<http://www.isa.net>).

<sup>4</sup> "New Survey Indicates How To Increase Consumer Confidence In Shopping Online", BBBOnline website ([bbbonline.org](http://bbbonline.org)), February 1998. The survey was conducted by Greenfield Online, and reported January 27, 1998. Among the observations were: "The main concern of survey respondents is the security of online shopping, and those who have never purchased anything online are especially worried about this." "Of those surveyed, 83% cited security of payment as a main concern about online shopping."

<sup>5</sup> TRUSTe website (<http://www.truste.org>) February 1998, citing "BCG Consumer Survey".

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Those in government and in commercial enterprises who want Internet business to grow know that the main hold-up is an absence of consumer trust. Most customers are still not prepared to shop online. As shown in frequent surveys, among the primary concerns for consumers when they think about electronic shopping are:

- personal and family privacy
- the security of financial transactions and related data.

Other inhibiting factors for consumers may include:

- a generalized worry about being short-changed or scammed, related to being unable to inspect goods or to witness services before purchase
- loss of enjoyment associated with in-person shopping
- uncertainty about dealing with people or businesses that one cannot see, visit or even confidently identify
- being stuck with unpredictable and/or hefty shipping costs
- discomfort with the newness of online payment systems
- (for Canadians and most other consumers) having to pay in US dollars or in another currency of the online merchant's country
- worries about being easily able to resolve complaints
- worries about able to obtain a concrete remedy
- doubts about the ability to resolve disputes that may arise from unresolved complaints
- further doubts about the effectiveness of existing consumer protection mechanisms in a transnational and intangible marketplace

As the CI poll and anecdotal evidence from the media remind us, the above-listed consumer perceptions of the e-commerce domain are not without foundation. These real or imagined traits of online marketing suggest the advisability of protections for consumers that are additional to or somewhat different from safeguards available for retail transactions generally. Though many of the characteristics mentioned may also apply to telemarketing and to shopping by catalogue or direct mail, survey and anecdotal evidence indicate that these perceived shortcomings cause deeper deterrence for consumers when they mull over electronic shopping.

### **2.2 Catalysts for Studying the Feasibility of Regulatory Options at this Time**

The inspiration to begin studying the feasibility of e-commerce standards in mid-1999 came mainly from a wave of recent endeavours of interest to Canada, such as the following:

- (1) the (then) draft OECD *Consumer Protection Guidelines for Electronic Commerce*, setting out a range of general principles for online purchases;
- (2) the (then) draft *Principles of Consumer Protection for Electronic Commerce - A Canadian Framework* arrived at through a multiparty process coordinated by the Office of Consumer Affairs, Industry Canada (Working Group on Electronic Commerce and Consumers);

- (3) studies on electronic commerce from government bodies in Australia and New Zealand and from a number of international business groups;
- (4) the work of the ad hoc advisory committee to the Consumer Policy Committee (COPOLCO) of the ISO, concerning Global Marketplace practices;
- (5) research, publications and pilot projects on electronic commerce, on voluntary codes and on standards, under the auspices of the Office of Consumer Affairs;
- (6) the Standards Australia standard on complaints handling, and related discussion documents pertaining to complaints handling;
- (7) a draft standard (adopted October 1999) from Australia on dispute resolution, and related discussion documents pertaining to dispute resolution;
- (8) guides concerning the development of voluntary codes, prepared by the Canadian, Australian and other governments;
- (9) research, consultations and conferences on voluntary codes, under the aegis of the UK Office for Fair Trading.

The above-noted initiatives provide evidence of widespread interest in looking at codes and standards related to complaints handling and dispute resolution. At the same time, the initiatives reveal a desire by stakeholders to get a handle on good practices in electronic marketing. Regarding the latter theme, there are other pointers. Many ventures have sprung up to meet the apparent need for assurance among potential online shoppers. For example, several services such as BBBOnline, WebTrust, and TRUSTe offer to vet online merchants and provide a measure of confirmation about the reliability of these firms for online shoppers. BBBOnline and others have specific services targeted at privacy protection in electronic transactions.

Leaving aside the question of voluntary codes in general, even if everyone else wants to encourage consumers to shop online, should Canada put energy into similar ventures? Is that a wise use of public resources after years of cutbacks? Since only a fraction of online businesses are based in Canada, would it not be a better policy to allow consumers to become even further deterred from shopping on the Web? Some arguments against a wait-and-see approach suggest themselves. Many consumers will shop via the Net regardless of any unease or warnings, and governments should not abdicate their responsibilities to seek ways to protect them. Many voices in Canadian business, legislative and consumer circles want Canada to act, not just to protect consumers, but to assist Canadian businesses that want to have a competitive online presence. According to a Deloitte & Touche/Angus Reid poll reported in many media sources in May 1999, 90 percent of Canadian online shoppers consciously look for Canadian websites when shopping, but only 38 percent conduct their transactions with a Canadian company.

Voluntary arrangements, including standards, perhaps endorsed or supported by government, are among the options for action. Canada has a lot of expertise to offer on voluntary codes and standards, and this could be applied to the online realm. As one of the leading high tech nations, Canada can and perhaps should play a leadership role in developments in the electronic marketplace, in the interests of Canadian consumers, the high tech industry, retail businesses and citizens. In order to influence developments internationally, Canada needs to be a player in the shaping of regulatory options. Canada's international obligations also require such participation.

### **2.3 What is a Standard?**

I In the consumer's world, the best known standards are those that apply to everyday safety and convenience of goods, such as standards ensuring that most appliance plugs in a country fit a certain way into electrical sockets, or that virtually all typewriter and computer keyboards in the world are lined up in QWERTY order. The European consumer organization, ANEC, says this about standards at its website (<http://www.anec.org>):

What is Standardisation? Standardisation is the process that establishes technical criteria to be used as rules, guidelines or definitions of characteristics to ensure that products, materials and services are fit for their purpose. It is about making products and services comparable... Standards define how a product or service will function ... whether a product or service is easy to use and ... safe.

Standards can provide assurance about the reliability or other characteristics of services. For example, a standards regime could give consumers some certainty that a participating online business follows good practices for protecting personal privacy, or maintains consistent procedures for handling complaints.

A voluntary code is a commitment made by one or more firms to abide by a stated set of practice principles. A standard is a formal voluntary code setting out a documented agreement containing technical specifications or other criteria that a product, process or service must meet. Official Canadian standards are arrived at through a recognized national consensus procedure, similar to procedures followed in many industrialized countries. In this Overview and in the three feasibility studies, the main focus will be on official standards of the type framed and recognized in Canada. These Canadian standards are developed by a multi-stakeholder negotiation and drafting process, under the auspices of a recognized Standards Development Organization (SDO).

### **2.4 The Climate for Standards in Canada**

The National Standards System (NSS) is the framework for developing, promoting and implementing standards in Canada. The Standards Council of Canada (SCC), a federal crown corporation, is responsible for coordinating the NSS. Representatives from the federal and provincial governments and a range of public and private interests sit on the Council. There is consumer representation on the SCC, and the importance of the consumer viewpoint has been acknowledged by the creation of a Consumer and Public Interest Committee.

The fact that standards prepared under the NSS involve formal consensus among parties representing many interests weighs in favour of such standards as a way to respond to consumer protection issues in the electronic marketplace. Standards developed under Canada's NSS have national and international credibility among concerned stakeholders. Strong credibility will be an essential ingredient for overcoming the reluctance exhibited by consumers with respect to making purchases by electronic means. It should be recalled that the kinds of procedures followed in Canada for development of standards are also the norm for counterparts in several other nations with whom Canada cooperates on such matters, and in the International Standards Organization (ISO).

Some standards (for example in a few highly technical or defence-related fields) are not arrived at through broad-based consensus in Canada's NSS. Furthermore, since terminology is flexible in the field of voluntary codes, an industry association or company is free to use the term "standard" to refer to its own voluntary code, whether that code is strong or without substance. On the other hand, it is possible for a trade association's "standard", to earn respect and credibility, even though the agreement is not an NSS standard. Such is the case with the set of customer service standards administered for Canadian cable television businesses by the Canadian Cable Television Foundation.

Because of the good reputation of Canada's venerable standards system and of participants such as the Canadian Standards Association (now CSA International), business, government and knowledgeable consumers have a good view of standards. With respect to practice/service standards of the type that might be applicable to electronic commerce, the way has been prepared somewhat by the consensus achievement of the CSA Privacy Standard in 1996. Business, government representatives, and consumer representatives worked together in the development of this voluntary Canadian standard for the protection of personal information and privacy.

## **2.5 Looking to the Future**

E-commerce standards for the management of complaints and disputes and for guiding the development of e-commerce voluntary codes can indicate to all merchants acceptable online marketing and consumer relations practices. Such standards would provide some assurance to consumers and to regulators that subscribing online merchants are meeting recognized good practice commitments. Governments can potentially benefit from the adoption of e-commerce standards, since adherence by marketers to these standards could support the goal of consumer protection while decreasing the need for enforcement action.

Putting into place standards for development and implementation of voluntary codes that relate to electronic commerce could be a necessary investment to prevent a further decrease in consumer confidence. If, to attract custom, a number of firms and industry associations advertise e-commerce voluntary codes that lack substance and bring no real benefit to consumers, this could lead to a magnification of distrust for online shopping. Having good standards available as benchmarks could raise awareness and expectations as to acceptable voluntary pledges and practices. Well-publicized standards could help the media and

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consumers to become more sophisticated about what would constitute ideal conduct on the part of electronic merchants, thus raising the bar for businesses who want to succeed online.

There are of course drawbacks to reliance upon standards for shaping the conduct of business-to-consumer relations online. As the experience with the CSA Privacy Standard has shown, achieving a substantial consensus-based agreement among stakeholders can take as long as legislative drafting and enactment. Moreover, the fact that a standard may become available does not mean that it will be taken up by industry. A business may be leery of taking on board a management or service standard relevant for electronic marketing when the merchant considers possible financial and management costs involved. A crucial factor at play in the online marketplace is the speed at which change takes place and the immediacy with which measures may be needed to build consumer confidence (and the confidence of businesses as well).

There are many types of "certification" and "authentication" services, many with their own logos. There is a proliferation of web seals claiming to be a "trustmark", some of which do not merit that label. The crowding of websites with multiple icons that consumers are not familiar with can make electronic shopping confusing. Those wishing to promote online transactions between consumers and businesses based in Canada may feel a need to take action long before formal standards could be established, though stakeholders may decide that it is worth working towards one or more e-commerce standards in the long run.

The advantages of national and worldwide standards systems as modes for improving the e-commerce landscape - for consumers and for marketers - include the following: The systems are already in place and have credibility. Infrastructure for standards implementation is available in or for every country, through national standards bodies and through the established international system. An integrated system operates globally, across international boundaries, and was designed to do so.

### **3. FACTORS TO CONSIDER IN ASSESSING A STANDARD'S FEASIBILITY**

The factors covered in section 2 above are relevant for all three feasibility studies. Consequently, these factors are addressed at greater length in this Overview than in the feasibility studies. Variances from general observations, and special considerations applicable to a given potential standard, are addressed within the individual studies. Below is a list of some of the main feasibility questions that underlie this Overview and the three studies:

- What considerations or perspectives are different in the realm of electronic commerce as compared with other modes of marketing or transacting between consumers and businesses?
- Do the differences justify allocation of resources by governments and other interested parties for development of new or different voluntary instruments?
- What are the advantages and disadvantages of a standard as compared with legislation, a patchwork of company and sectoral codes or other approaches?
- For any of the contemplated standards, are there competitive advantages for e-commerce marketers to be part of the scheme and competitive disadvantages associated with being an outsider? What steps and elements are necessary to ensure that businesses as well as consumers gain from the introduction of the standard?
- Is there already an international standard that can satisfy the relevant domestic needs?
- Assuming that development of an electronic commerce standard is the preferred approach, is a national Standards Development Organization (SDO) a good or "best" vehicle to co-ordinate the creation of such a standard?
- Where would a standard fit into the existing mix of legislation, one-company and industry association codes and other voluntary arrangements?
- How poised are systems of law and regulation, voluntary codes and standards to confront cross-border e-commerce issues?
- Which stakeholders should participate in development of the standard?
- Are there SDOs with the appropriate capacity and representation of expertise and interests to develop the standard? Do the usual stakeholder participants have the necessary kinds of expertise and capacity?
- Assuming that a consensus-making, multiparty standards process is used through an SDO, should there be new players added to the mix (e.g. from the high tech side, or representing experienced Internet researchers and shoppers)?
- What kind of education and publicity strategy would be needed to enhance feasibility for an e-commerce standard?
- Assuming a credible e-commerce standard must be allied to an online trustmark, how could standards developers guard against proliferation of web seals and concomitant confusion of consumers? Is there a process whereby all players could agree on a common online logo?
  
- What are appropriate sources of funding for the standards development process?

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- Should a standard on voluntary e-commerce codes merely set out general guidance on issues to be addressed and steps to follow in establishing codes, or should the standard contain more detail?
- To what extent will there be resistance to a general Standard on Complaints Handling or on Dispute Resolution by industry associations or individual firms that believe they already have a competitive edge because of their established presence in the general retail market or in e-commerce?
- Since there are already voluntary codes in many retail sectors, should a standard aim narrowly at only specific e-commerce nuances of, for example, cancellations or complaints handling?

OR

- Recognizing that some traditional elements of business-consumer relations operate differently in the e-commerce domain, should a more complete set of elements be covered in any envisaged standard?

## **4. COMPARING STANDARDS FOR ELECTRONIC COMMERCE WITH RELIANCE ON LAW-BASED REGULATION - ADVANTAGES AND DISADVANTAGES**

### **4.1 Introduction: Jurisdictional Conflicts and the Pace of Change**

"The pace of change and nascent state of electronic commerce have heightened the risks associated with premature or unnecessary government regulation."<sup>6</sup> "It is the consensus position of the [Global Business Dialogue on Electronic Commerce] that inconsistent local, national and international patchwork regulation and inflexible regulatory constraints will deprive consumers of the economic benefits of an innovative electronic marketplace and would lead to significant uncertainty to consumers."<sup>7</sup>

It is true that evolution and innovation in the e-commerce realm is so rapid that it would be very difficult for national, let alone international, regulators to keep in step or ahead. Yet while big business organizations emphasize their desire that governments hold back from regulating the electronic marketplace, Consumers International has said that self-regulation for the electronic marketplace is unacceptable and will do nothing to create consumer confidence. "Online businesses must be legally obliged to respect basic consumer rights just as other businesses are, and online consumers must have effective recourse in the event that they are wronged."<sup>8</sup>

As a "third way", development of formal standards could allow differing stakeholders in different jurisdictions to find common ground, and could thereby benefit consumers, business, and regulators. Moreover, widely agreed compromises resulting in a standard may be easier to attain than a consensus agreement on a binding law.

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<sup>6</sup> Background section, "A Global Action Plan for Electronic Commerce", October 1999, page 1.

<sup>7</sup> Excerpt from a statement issued by the Global Business Dialogue on Electronic Commerce, September 1999.

<sup>8</sup> Louise Sylvan, Vice-President of Consumers International, and CEO of the Australian Consumers' Association, at the OECD's electronic commerce meeting, Ottawa, 1998.

One benefit of a national Canadian standard is that it could get around possible conflict among federal, provincial and territorial jurisdictions that may have overlapping responsibilities to monitor inter-provincial Internet shopping. Cross-border difficulties in online commerce are amplified by the fact that a high percentage of transactions on the Internet reach across international frontiers, often involving purchases from businesses located (or claiming to be located) in the United States. An international standard would be an advantageous tool for helping to address this challenge.

#### **4.2 Law and Standards - The Consumer Perspective**

Many consumers would not be able to overcome their distrust of electronic transactions without having the security of either direct government regulation or some state involvement/oversight. Even if a voluntary standard were inaugurated, large numbers of consumers would want legislation to underpin it. Law has the advantage of certainty and the force of the state apparatus behind it. A standard would not generally give rise to as much severity of result as law can in the event of shoddy conduct by a merchant. With the application of law, there can be tangible losses to the business owners, and therefore real incentives to avoid cheating customers or giving poor service.

Longstanding consumer protection law can be applied or adapted to fit electronic consumer transactions, however, whether a standard is developed or not. Relevant areas of legislation include those on contract formation, on contract cancellation rights and on misrepresentation and fraud. In the era of public sector cutbacks, the extent to which governments will step into the ring with new enforcement mechanisms to protect consumers who shop online is uncertain, although such developments would no doubt be welcomed by consumer advocates. Pursuit of small complaints that individuals have with online sellers may not be a priority activity for regulators. Even for complaints involving large purchases (e.g. car purchases, auctioned art or stocks), consumers may be left to their own devices to obtain remedies. It may not be worthwhile for a consumer personally to pursue a minor legal dispute with an online vendor. Many such problems might be avoided or handled better by an effective system of standards for electronic commerce.

An applied standard on e-commerce could cover territory that laws and enforcement do not yet adequately address. This could help to build consumer trust. What would especially help is if the standard overcame cross-border problems and generated significant follow-up legal consequences for breach of the standard. Even if a standard were set up for e-commerce, existing law could still be applied against free riders and fraud artists. Indeed, consumers would want reassurance that law is still available to catch malfeasors and to encourage business to comply with a standard.

Consumer and industry representatives have opportunities to influence the design of formal (National Standards System) standards, although the same is often true for legislation. With the NSS consensus process, however, consumer and business influence is direct, and the standard may eventually become mandatory by being adopted into or referred to in legislation. In the development of laws in the same field, industry and consumer input

would probably be through the more indirect method of lobbying politicians and government officials.

It should be recognized, of course, that although consumers may be well represented in NSS processes, there are only so many consumer volunteers and there are many committees and consultative groups to participate in. Given the high present attention on e-commerce, one could even contend that consumers should grasp the opportunity to push for stronger laws, rather than using the same energy for giving input to a standard. That view would ignore the reality that for most of the 1980s and 1990s, governments have been withdrawing from regulatory enforcement in favour of voluntary arrangements, although it seems unlikely that the majority of citizens preferred this approach. The likelihood that citizens might desire strong consumer protection laws for e-commerce does not mean that they will get them.

A dearth of resources to participate in standards development (or in legislative lobbying) is an obstacle constantly facing consumer organizations and individual consumer representatives. It is often difficult to find money and back-up support for representatives. While many committee members from industry and government participate as part of their jobs, the consumer representative is truly a volunteer. He or she is not paid for committee participation. Yet Internet commerce has sufficient current cachet that it may now be easier to attract consumer volunteers with pertinent expertise than it is for more traditional areas of standards development and implementation.

A standard would act as a benchmark against which consumers and the media can compare online merchants, allowing comparisons on the basis of quality of service, not just ubiquity or size.

### **4.3 Law and Standards - The Business Case**

#### **4.3.1 Is It Good for Business?**

Traditionally, business prefers voluntary arrangements such as codes and standards, rather than laws, since voluntary schemes give industry more control and flexibility. At the OECD meeting held in Ottawa in the autumn of 1998, business delegates, particularly those from the United States, advocated a self-regulatory approach for Internet marketing. That sentiment permeates joint statements issued by business groupings that speak out on e-commerce policy. For example, in October 1999, the Alliance for Global Business, comprised of world business organizations such as the International Chamber of Commerce, unveiled a Global Action Plan for Electronic Commerce. It proclaims efforts by the private sector "to improve consumer confidence in e-business", although a reading of the scheme gives the impression that the goal is to improve business confidence and control.<sup>9</sup> The Plan, like a version released a year earlier at the OECD ministerial meeting on electronic commerce, stresses unreservedly the importance of "voluntary self-regulation".

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<sup>9</sup> "A Global Action Plan for Electronic Commerce Prepared by Business with recommendations for Governments" available on the website of the International Chamber of Commerce: <http://www.iccwbo.org/>.

Though the Plan asks governments to be generally restrained in Internet regulation it does urge them to promote a stable international legal environment, ensuring that competition is fair and that electronic contracts can be enforced. Business tends to like certainty and consistency when it comes to rules that must be followed in different jurisdictions, and companies do not like to face unethical or rogue competition. The presence of a trans-border standard could help to stabilize the regulatory environment in different corners of the e-commerce world marketplace.

A major reason for an industry association to want to establish standards for e-commerce is that members of the association may attract new online business. Firms adhering to the standard could gain good publicity, associated with heightened media and consumer recognition and trust. It is easier to manage and make use of beneficial public relations based on compliance with positively framed standards, in contrast with a record of being law-abiding. ("We obey the law" is a novel but not clearly enticing ad slogan.)

Though business can lobby to adjust legislation to its liking, commercial interests can also directly influence the design of standards covering what would otherwise be legal territory, through representatives on standards bodies.

#### **4.3.2 Possible Differences Between the Perspectives of Large Businesses and Those of Small and Medium Enterprises (SMEs)**

Many but not all concerns of small business are shared by big business. Because it offers more flexibility than legal controls, an e-commerce standard may be attractive to both large businesses and SMEs.

Being associated with a prominent e-commerce standard would give added legitimacy and profile to smaller players in the electronic marketplace. Large commercial enterprises, however, may already have enough brand name profile to attract business on the Net. To the extent that they want controls at all, some big businesses might prefer laws rather than standards, to reign in unscrupulous traders who could ruin the image of e-commerce and dampen the overall market. It is easier for large enterprises to find the resources to meet the requirements of a law.

On the other hand, it may take a long while to put into place a network of effective laws to cover Internet transactions globally (although achieving global standards is not guaranteed to be a rapid process either). Meanwhile, many potential customers will have been put off Internet shopping by media spotlights on shady and unreliable online marketers and their practices. A standard acceptable across borders may fix benchmarks for online conduct without awaiting laws. Industry participation in the devising of standards can set the stage for later laws that are seen by business as being realistic.

The pronouncements issued by associations representing big business on the e-commerce front (see part 4.1 above) assert that large companies want to profit from the growth of Internet commerce, while being subject to as little regulation as possible. It is equally

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apparent, however, that legions of consumers will not buy in unless they see evidence of more defence for their interests. Wishing to avoid unwelcome regulation but at the same time to attract new customers, even e-commerce market leaders may find reason to back inauguration of formal e-commerce practice standards.

Business ought not to assume that trans-frontier Internet-based commerce cannot be regulated. For instance, the *European Union Distance Selling Directive*<sup>10</sup> is scheduled to be implemented in all member states by 4 June 2000. The Directive is designed to protect consumers who buy merchandise by such means as mail order, telephone, fax, e-mail or the Web. The Directive covers the sale of most goods and services (though financial services are excluded). When incorporated into national laws around the EU, the Directive should add more uniformity of consumer rights across Europe.

### 4.4 Law and Standards - The Government and Regulatory Side

As was noted earlier, it may be possible to reach a consensus of all stakeholders with respect to a standard when a similar agreement could not be achieved concerning a law. Agreement might be found more quickly, and therefore less expensively, than if a law were pursued to cover the same field of activity. A standard recognized and applicable in many countries at once might be more quickly attained than an international treaty governing an aspect of e-commerce, and this relative speed could pertain to amendment procedures as well. This is not to suggest that the process of achieving an international standard would be speedy, just that it might be quicker than arranging an international convention or getting reciprocal enforcement of national legislation. Awareness that a standard would be less binding could also lead some business stakeholders to accept more stringent conditions than they would if the terms were part of a law.

For government, an added benefit of a strong electronic commerce standard, assuming that business complies with it and consumers grow to believe in it, would be a reduction in regulatory work. For consumer protection issues involving many small transactions, regulatory and other legal approaches can be expensive and difficult to put into practice. Governments could potentially shut down a bad actor if a pattern of questionable dealings by an online seller emerged, but actions to halt flouting of consumer rights in the Internet bazaar would often require co-operation between authorities in different provinces or countries.

Even if the will were present for strong state regulation and enforcement, cross-border issues within Canada and internationally would fetter legislated efforts at controlling the Internet marketplace. At the same time, Canada's regulatory efforts need to be coordinated with those of countries and international bodies with which Canada customarily co-operates in matters affecting consumers. Governments must develop laws and regimes that remain workable when numerous legal jurisdictions are involved. A standard can be a vehicle to get around many transborder issues, while raising expectations for acceptable conduct by online businesses that sell to and from Canada.

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<sup>10</sup> <http://www.europa.eu.int/comm/dg24/policy/developments>

Canada could adopt a standard developed by a like-minded country or by an international entity, or Canada could produce a standard that others may wish to adopt, provided that there is reasonable harmony between Canadian efforts and those evolving elsewhere. Standards may give needed flexibility to respond to the swift changes in e-commerce.

E-commerce standards can be a route for testing the reasonableness and practicality of provisions that could later become law. Voluntary standards can undergo strengthening in stages. Standards that begin as informal or contractual voluntary instruments may later be reinforced if laws adopt or make reference to them. The 1996 CSA Privacy Standard provides an example. There have been many steps on its path from diverse voluntary codes to a national standard with sectoral variations, to a bill before Parliament (October/November 1999) that, once enacted, would allow for some national uniformity in what is a cross-jurisdictional area of legal responsibility.

Governments can provide incentives for the adoption of a voluntary code that conforms to an electronic commerce standard. If a company or an industry association develops a voluntary code that complies with a standard on voluntary codes and thus obviates routine regulatory supervision, a government could choose to provide participating firms with public recognition, preference in contract allocation (NAFTA and WTO permitting), or leeway in regulatory enforcement. The government can broadcast that it will look favourably on industry associations or firms that develop and implement a code complying with the relevant e-commerce standard.

An example of how regulatory incentives can operate is provided by Connecticut's *Act Concerning Exemplary Environmental Management Systems* (1999) in effect. Pursuant to the Act, companies that meet that state's criteria for an acceptable Environmental Management System and have a good compliance record can anticipate expedited permit reviews, reduced fees, less frequent reporting, a facility wide permit for all approvals, and public recognition of achievement. A business can benefit from the program if the firm is registered as meeting ISO 14001 and has adopted certain internationally recognized principles for sustainability.<sup>11</sup>

Tangible penalties for non-compliance with a standard can occur in the absence of explicit recognition in legislation, through a standards system involving third party compliance assessment. Loss of business could result from bad publicity if the media learned that a respected third party entity determined that a company fell short of promises made when subscribing to an e-commerce standard. News can be spread fast on the Internet, and of course broadcast and print media are not always averse to reporting embarrassing business news.

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<sup>11</sup> Thanks to Kernaghan Webb of the Office of Consumer Affairs, Industry Canada, for having posted this information (and much other data relevant for this set of studies) on the online Voluntary Codes Research Forum.

A standard can also be one foundation for consumers seeking remedies through existing law. For example, if a company or an industry association adopts a voluntary code allegedly modelled on an e-commerce standard, and boasts falsely about meeting that standard, non-compliance could lead to litigation. The non-compliant company could be subject to court action by the SDO. Other possibilities are criminal or civil litigation by a government because of alleged misrepresentation by the non-compliant company. Another option is for a group of citizens to launch a class action against the non-complying firm. The suit would be based on dissatisfaction among consumers who relied to their detriment on a company or on an industry association.

## **5. COMPARING STANDARDS FOR ELECTRONIC COMMERCE WITH AD HOC VOLUNTARY CODES - ADVANTAGES AND DISADVANTAGES**

### **5.1 Voluntary Codes and Standards - The Consumer Perspective**

Consumers customarily are wary of voluntary arrangements, as compared to laws. In OECD fora and elsewhere, consumer representatives have made it clear that reliance on self-regulation is not a way to gain consumer confidence.

For e-commerce, a standard developed under the National Standards System (NSS) could be an acceptable in-between mechanism that creates a moderate level of obligation for businesses along with the likelihood that failure to comply would lead to negative business consequences. The NSS is generally considered to be an open process allowing for meaningful input from all stakeholders. Final provisions in resulting documentation are achieved through consensus. These facets of development can be undertaken for any voluntary code, but *must* be present in the evolution of a standard. An official standard is generally a stronger form of code. Since most consumers would not know the difference between a standard and another form of voluntary code, adoption of a standard would not impress many without a strong public awareness campaign, endorsement by government and endorsement by well-known consumer groups.

It would often be difficult for consumers to judge whether a voluntary code is designed to protect consumer interests adequately. It can also be difficult to judge the efficacy of a law or standard, but usually there is some form of compliance assurance attached to a law or standard that is not dependent primarily on consumer knowledge or consumer complaints.

In the instance of standards negotiated through the NSS and in similar SDO avenues in other countries and the ISO (see part 6), consumer representatives have a direct voice in the provisions developed. This is a clear advantage over most voluntary schemes devised within firms or industry sectors.<sup>12</sup>

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<sup>12</sup> It should be said that some voluntary codes that are not described as a "standard" have nonetheless been developed and administered in a manner similar to that which is recommended for a formal standard. An example of a robust single-firm code of practice that operates like a standard is the Customer Charter of Australian Associated Motor Insurers (AAMI). Annual reports on the AAMI scheme can be read at <http://www.aami.co.au/>. AAMI's code regime is also discussed in Allan McChesney, *Voluntary Practices and Standards for Consumer*

## 5.2 Voluntary Codes and Standards - The Business Case

### 5.2.1 Is It Good for Business?

Business has embraced standards on technical details that enhance convenience, and on management issues (covered e.g. by ISO standards) that enhance inter-business and business-to-government credibility. Yet when it comes to customer relations, many businesses may prefer the flexibility and autonomy of voluntary arrangements that carry less weight than standards. Since online merchants face an unusual pattern of consumer distrust, however, it would seem worthwhile for industry to latch onto a mechanism that could offer greater comfort to consumers and perhaps impress journalists who follow electronic commerce developments. An e-commerce standard tied to an adequate plan for publicity and compliance assurance may be the answer.

It is in the interest of reputable online businesses to fix consumer confidence problems rapidly, and strong standards could provide one solution. Commercial entities in other countries are already stepping in to develop purported "standards" that will not be devised through multi-stakeholder consensus, such as the US private sector-driven effort to produce "The Standard for Internet Commerce".<sup>13</sup> Canadian businesses may want to ensure that the online standards that consumers become accustomed to seeing advertised on the Net are good ones - and that global consumers associate these with Canadian merchants. There could be a true competitive advantage to being first online with a credible, effective set of e-commerce standards.

Among the concerns that businesses have with respect to voluntary initiatives are the number of them that a firm might have to deal with and the potential overlap or conflict between codes. There is also a potential for a code that the firm complies with in one country to be different from a code with a somewhat similar objective in another country. These difficulties can arise with standards as well, but they are somewhat less likely to occur, because they are part of an international system built on broad consensus.

### 5.2.2 Possible Differences Between the Perspectives of Large Businesses and Those of Small and Medium Enterprises

Worthwhile standards, together with credible and affordable digital trustmarks, are needed most by smaller online merchants. Many large businesses already have voluntary code arrangements. They may not be attracted to the notion of supporting a standard that could conflict or compete with their one-company or sectoral code.

Consumers seem more willing to buy from a well "branded" (well known) larger firm, even without the additional assurance that a trustmark linked to standard might bring. Larger

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*Relations in Electronic Commerce*, unpublished research study for the Office of Consumer Affairs, Industry Canada (1998/1999), 28-32.

<sup>13</sup> The initiative began under the wing of the US publishing firm Ziff-Davis. A description of the scheme, along with an evolving draft, may be viewed at <http://www.gii.com/standard/> or at <http://www.commercestandard.com/>.

retailers have often amplified their reputations through good customer service and easy refunds.

Even SMEs that are part of a comprehensive code, such as that of the Canadian Marketing Association, may feel that their code is adequate. They may see no advantage in taking on a new obligation that covers only e-commerce, from which only a small portion of their revenues is presently derived.

On the other side, many small businesses are not in sectors with a voluntary code. They need other ways to gain consumer confidence and sales. These firms must compete with online giants that have become e-commerce brand names. One entry hurdle faced by small entrepreneurs on the Web is that it can be very costly to arrange for payments through credit card companies. In order to protect themselves against losses, and perhaps just because they have dominant market position, Visa and MasterCard demand large sums to merchants for having an account online. The cost presents an additional barrier to many companies.

Smaller companies may feel that joining onto a reputable standard is precisely what they need, to level the playing field somewhat. By doing so, they could foresee attracting higher levels of consumer interest and trust.

The real or imagined cost of assuring compliance can be a drawback, especially for smaller firms. Some have found that conformity with ISO 9000 or 14000 standards requires a greater degree of resources than they anticipated. We should recall, however, that under ISO 9000, companies have a range of choices as to which obligations they take on. ISO 9000 has a hierarchy of standards provision, in decreasing order of complexity. Once specific obligations are accepted, the company must comply accordingly and prove to an auditor on a regular basis that they are doing so. Perhaps smaller e-commerce marketers could be allowed to undertake a supplementary ISO 9000 agreement relevant to facets of e-commerce, without having to take on a completely new standard or a full, stringent complex of pledges. This is an option that an SDO could consider. Steering e-commerce consumer standards in this could help to reduce the expense of joining on to an e-commerce standard and thus ease entry into the system for less sizable online merchants.

A company that could easily afford to become involved with a new standard and certification pertaining to e-commerce may not think it needs to participate if the firm has a good name and market share already. Large enterprises may not seek the additional profile and boost to credibility that may attach to firms subscribing to a standard for electronic commerce. Yet managerial pride in the corporation's leadership position may cause a company to sign on anyway, as part of maintaining corporate image. Or management may conclude that what is good for the e-commerce consumer marketplace is good for the firm.

### **5.3 Voluntary Codes and Standards - The Government Side**

Given that a standard is a form of voluntary code, the statements made in parts 4.1 and 4.4 above are generally applicable here as well. Standards may be more attractive to regulators

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than other voluntary arrangements, because standards support greater uniformity across an industry and across a country. They are also tied to a world system that assists Canada to meet its international obligations. Standards are further along the road toward law than are other voluntary options, and are more likely to achieve the kinds of public goals that legislation would seek to foster. Moreover, through standards negotiated in the mechanisms of official SDOs, governments have a direct voice in negotiation of the provisions developed.

A major problem with current business-driven proposals for self-regulation in e-commerce is that the contemplated codes or guidelines would not be devised in the inclusive consensus manner required for national and ISO standards. That may lead to weaker provisions, reducing the chance of consumer buy-in. It would also heighten the possibility that governments would need to step in later with regulatory action.

## **6. WHAT IS THE APPROPRIATE ORGANIZATION FOR COORDINATING DEVELOPMENT OF STANDARDS FOR ELECTRONIC COMMERCE?**

### **6.1 Introductory Note**

The present discussion sets out factors to be considered in all three feasibility studies.

## 6.2 Is a Standards Development Organization in Canada the Answer?

During consultations with advisors in the course of preparing the set of feasibility studies, the balance of opinion expressed favoured employing a national standards body to develop standards for electronic commerce. Different nations' Standards Development Organizations (SDOs) take different approaches, however. In Canada's National Standards System (NSS), every technical committee dealing with a product used by a consumer must include a consumer representative. Consumer representation in development of standards in Canada has long been the expected and actual practice:

... [F]or many decades there has been a moral and cultural (though perhaps not a legal) expectation that consumers be represented and that consumers should participate routinely on standards-writing committees in order to improve committee results, particularly when public safety is an issue.<sup>14</sup>

The involvement of consumer representation from the outset in drawing up NSS standards adds significantly to the public and consumer trust that may be attached to a delivered standard.

There are bodies that develop standards in Canada that are not part of the NSS. These groups often serve a narrow market or have particular needs, such as confidentiality of new products that make the multi-stakeholder consensus process either inappropriate or burdensome. In some areas, particularly in electronics or computers fields where technology changes quickly, de facto standards emerge that are developed by a leading company or consortium. These standards acquire authority or influence due to the market share of the firms that use them. Yet for consumer service standards such as those contemplated in the e-commerce feasibility studies, standards put forward without a consultative process would not seem appropriate, nor likely to fly very far.

Consumer participation adds credibility to Canada's standards nationally, as well as enhancing the chance of their acceptance at the international level. If an e-commerce standard were first developed in Canada, it would begin on a positive international footing. Other countries can be asked credibly to support an international e-commerce standard based on a standard framed first in one country, as is reportedly being attempted within ISO for the CSA Privacy Standard and the Australian Complaints Handling Standard. National and international SDOs considering a Canadian standard as a basis for an international standard on e-commerce could be sure that the standard had been assessed and contributed to by representatives of most of the key interests prior to being agreed upon.

If Canada took the lead in developing one or more standards for electronic commerce, this could add impetus to work being done or contemplated by the international standardization

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<sup>14</sup> Jeanne Bank, "Whither Consumer Representation? Reflections of a Canadian Consumer Standards Professional", in *Advancing the Consumer Interest*, Volume 11, Number 1, Spring/Summer 1999.

community. There would be a unique opportunity for Canada to ensure that standards in this new field are strong and are well viewed by the various interests concerned.

### **6.3 Why Not Rely on Another Country's SDO to Take Leadership?**

A logical alternative to developing a standard in Canada is to take one off the shelf from a like-minded country, adding Canadian bells, whistles and earmuffs. After all, procedures similar to Canada's NSS are followed in the national standards system of Australia and other places. Among its hundreds of other standards, Australia has published two directly relevant standards, one on complaints handling, and another on dispute resolution. A standard that starts in Australia could become a global standard. Canada could then adopt it through Canadian participation in an international organization. Or, Canada could take on board the Australian standard directly and then work with Australia to promote that standard internationally.

A government organization that has been working on a comprehensive standard for appropriate practices in consumer transactions is the United Kingdom Office for Fair Trading (OFT). The OFT has produced a document exploring the idea of a "core standard" on consumer trading practices, and these proposals have been discussed at multi-stakeholder conferences in Britain. This effort could lead to a standard listing minimum acceptable terms that would be needed in a voluntary code, or to a less stringent "benchmark" standard setting out the kinds of approaches and elements that are appropriate in developing and administering a voluntary code. If either variation of the contemplated standard were developed by, say, the British Standards Institution, it could be the foundation for a global or Canadian standard.

A key shortcoming of the Australian and UK initiatives described is that they do not deal with electronic commerce.

Canada often ties its trading rules and its product and service standards to those of the United States, so why not do so with an e-commerce standard? Given the high level of computer use in the United States, and the greater consumer uptake of electronic commerce in the USA than elsewhere, it may be appropriate for an e-commerce standard to be developed there, though Canada is also a leader in Internet spheres. A critical drawback is that standard-setting bodies in the USA are not bound by the same strictures as those in Canada. A minimal process is permitted and often used for eliciting input from consumers about proposed standards. Draft standards may be available for public review, but there is no obligation to pay full heed to comments from consumer groups, let alone to reach a consensus among all pivotal players. In the USA a "canvassing" method is acceptable. A drafter of a standard may canvass opinions by circulating a draft widely for comments. The developer of the standard is then allowed to refer to the resulting product as a "consensus standard", but that term is not accurate as measured against the Canadian model.

### **6.4 Advantages and Disadvantages of CSA International**

There are four Standards Development Organizations (SDOs) accredited by the Standards Council of Canada (SCC). Each of these SDOs develops standards using committees

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representing various interests and following a consensus process. The SDOs may submit standards developed through consensus to the SCC to be recognized as National Standards of Canada. One of these SDOs was suggested by study advisors as a likely hub for activity on an e-commerce consumer service standard. That SDO was the Canadian Standards Association, now known (as of 1999) as CSA International (still referred to herein as CSA).

The CSA was founded in 1919 and is Canada's oldest and largest SDO. It offers services in standards development, testing, certification and management systems registration. It is a private not-for-profit organization with offices across Canada, as well as in the United States and Asia. If the CSA became involved in drafting e-commerce standards, no doubt its Consumers and Standards Advisory Group would play a role. In fact, if the CSA coordinated development of the standard, the workings of the NSS ensure that the development exercise would be a joint effort involving CSA International, government agencies, industry and consumer representatives and any other kinds of stakeholders.

The CSA provides support for consumer representatives on its technical committees, including a training program, regular conferences and a consumer newsletter. Specific CSA staff are assigned to work with consumers.

The e-commerce standards being contemplated would perhaps be a combination of management standards, on which SDOs have established expertise, and customer service standards that have not generally been part of their concentrations. It is likely that among consumer, government and business representatives who could be selected to draft an e-commerce standard, there would be considerable cumulative experience on consumer relations practices. Moreover, the experience of the CSA with the privacy standard and of Standards Australia with standards for managing consumer complaints and disputes, indicates that taking on consumer-oriented standards for e-commerce would not be much of a stretch for a national SDO.

Among the several experts consulted by the writer in the course of preparing the three feasibility studies and this Overview, there appeared to be substantial support for the concept of developing one or more standards for consumer transactions in the electronic marketplace - and for having those standards devised under Canada's National Standards System. There was no definitive consensus on the wisdom of having the standard developed through the CSA, but it was the only one named as a serious candidate, and no one suggested preference for a different SDO. Furthermore, though international organizations were discussed, no advisor recommended one as an alternative to the CSA.

The background to the CSA Privacy Standard illustrates the CSA's potential value as a focal point for developing e-commerce consumer practice standards. One reason that the CSA was approached to develop a voluntary standard on privacy was that the various stakeholders thought of the CSA as a neutral forum. The success of the CSA drafting outcome is shown by the circumstance that in developing federal privacy legislation, the Canadian government used the CSA Standard as the basis. The ISO is looking at the

feasibility of international standards in this area, and considering using the CSA Standard as one foundation.

## **6.5 Standards Development Through an International Standards Body**

A question that must be asked with respect to each feasibility study is whether there is already an international standard that can satisfy domestic need. Over half of the standards designated as national standards of Canada in recent years have been based on international standards. Federal policy requires regulators to determine whether an international standard exists that can form the basis of a regulation. Trade agreements also require governments to use international standards for regulation, where possible, as an aid to harmonization.

Even if no international standard is in place, there is still a possibility that the better locus for devising a new standard is through an international standards development organization, rather than through one in Canada. The Standards Council of Canada follows guidelines established by international organizations such as the ISO. The NSS operates within an international standards regime that includes both the domestic standards systems of other countries (especially the United States) and those international standardization bodies that operate with a consensus process.

The ISO is a federation of national standards bodies with some 130 members; Canada's SCC is a member. The ISO develops International Standards in all areas of standardization, except the electrical and electronic fields. Members of ISO's more than 2000 sub-bodies include representatives of industry, government, consumers, research institutes and international organizations (e.g., Consumers International). Standards are developed according to the principles of consensus, global solutions (industry-wide solutions), and voluntary market-driven involvement. If ISO participants decided that the ISO ought to take on development of e-commerce standards, the ISO has the capability. Elements of ISO 14000 are already consumer-oriented, for example those that relate to environmental labeling. ISO 9000 is a procedural standard that can be adapted to include management of complaints and disputes arising through e-commerce.

COPOLCO, the Consumer Policy Advisory Committee of the ISO, provides a forum for discussion of viewpoints on national and international standardization. It comprises mainly member countries, but Consumers International (CI), the Organization for Economic Cooperation and Development (OECD) and other bodies liaise with COPOLCO. COPOLCO concentrates on safety and health, fitness for purpose, and protection of the environment. In activities that could have relevance for e-commerce standardization, COPOLCO has recently promoted initiation of voluntary standards work in areas such as environmental management, service standards and the privacy of personal information. The themes of the three possible e-commerce standards currently being studied for feasibility are in harmony with steps being undertaken by COPOLCO - namely complaints handling, dispute resolution and benchmarking for consumer-related voluntary codes.

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COPOLCO has recognized the potential of global standards as a bridge between an open global marketplace and lagging consumer confidence. In May 1997, the Global Marketplace Project Working Group was established. The GMP Working Group, chaired by Australia, consists of representatives from Britain, Canada, Japan, the Netherlands, Trinidad and Tobago. Canada offers also the support of a Canadian Advisory Committee (CAC) to the GMP, comprising a cross-section of consumer advocates, representatives from the Office of Consumer Affairs and the Department of Standards and Regulatory Affairs - both from Industry Canada - and one representative from a standards development organization.

Inspired and influenced by the substantial work being done by Australia and Britain, the GMP Working Group has acknowledged that governments have been moving away from applying prescriptive law to regulate markets. The focus instead is on market-based regulation such as codes of conduct and industry guidelines. In May 1999, the GMP Committee submitted to COPOLCO a proposal for the development of three standards. The recommendation for the development of a complaints handling standard was unanimously supported by the COPOLCO membership. In late 1999 and early 2000 pursuit of a complaints handling standard was undertaken through the Technical Management Board of ISO. Recommendations for standards on market-based codes of conduct, a set of consensus-based essential criteria for developing voluntary marketplace best practices, and an industry-sponsored customer dispute system were referred for further study.<sup>15</sup>

The Canadian National Committee to ISO is responsible for coordinating Canadian input to ISO, including consumer representation. Consumer representatives usually have an opportunity to present their views during the development of a Canadian position prior to international meetings. Ideally, the Canadian position will reflect consumer concerns and allow Canada to present a single strong viewpoint on international committees. In some cases, however, consumer organizations may find a strategic advantage to co-operate with Consumers International or other organizations that have an influence on international standards processes. There are practical hindrances to consumer participation at the international level, such as reportedly inadequate financial support.

There has reportedly been resistance shown within the ISO to new management standards beyond the ISO 9000 and ISO 14000. That is because of business concerns about the amount of work involved in the meeting these standards. Thus it may be unrealistic to anticipate the creation of an initial electronic commerce standard through the global ISO system.

Development of national and international norms on consumers and e-commerce have been developing in tandem, each process learning from the other. In 1998-99, the Organization for Economic Cooperation and Development (OECD) was continuing to

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<sup>15</sup> Thanks to Irene Seiferling, a member of the advisory group for the feasibility studies, for the initial COPOLCO background. Thanks also to Craig Campbell, of Industry Canada, for related timely advice.

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devise guidelines for consumer transactions in electronic commerce, while a Canadian multi-party group began and completed the *Principles of Consumer Protection for Electronic Commerce - A Canadian Framework*.<sup>16</sup>

One problem with working through the OECD or even within the ISO to develop a standard for e-commerce is that most ordinary consumers know nothing about the organizations. Having the ISO or OECD names associated with a standard might not trigger trust, or indeed *any* reaction, from most online shoppers. To the extent that a consumer is at all aware of standards, in Canada that knowledge may be linked to the CSA, but not to the ISO or the OECD. Most adult Canadians are familiar with the CSA logo on consumer and other goods. The vast majority of consumers are unfamiliar with ISO regimes, OECD committee initiatives and international standard setting. Though the OECD may draft helpful e-commerce guidelines, and the ISO can come up with good standards that encompass the consensus of consumer representatives, the result might be of small assistance in overcoming consumer reservations about electronic transactions.

In Canada at least, the CSA label is a recognized brand that consumers trust. The CSA label might enough interest to cause a browsing shopper to click an on-screen logo and learn about an applicable e-commerce consumer standard. Unfortunately, even if the CSA coordinated development of an e-commerce standard, the CSA logo would not likely be used. Standards administration and auditing is a competitive field. The CSA might not permit its logo to appear online as a reassurance or enticement to consumers, given that rival entities could be involved in assuring compliance with the standard. Each SDO guards its intellectual property jealously, as one way of assuring that its name continues to be regarded as a symbol of reliability. Use of the CSA label is authorized through strict contract terms that users agree on with the CSA. The Standards Council of Canada urges each SDO to insist that standards be shored up with strict provisions and compliance measures, in order to protect the SDO's mark.

Although the CSA logo might prove to be unavailable as an online "trustmark" indicating standards compliance by a merchant, the CSA name might still be involved in the standard's title, as in "CSA Privacy Standard". But this would not have the same first-glance recognition impact for consumers.

What about other nation's SDOs? Consumers in Australia, the UK and elsewhere are no doubt comfortable with the reputations and logos of their own leading national SDOs. Arguments favouring the CSA as a host for developing an e-commerce standard may be equally valid for an SDO in another country that employs true consensus procedures.

Whichever body developed an e-commerce standard, consumers would need to be educated about the standard and about the organizations who developed and back it. It may be

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<sup>16</sup> Working Group on Electronic Commerce and Consumers, *Principles of Consumer Protection for Electronic Commerce - A Canadian Framework* (Industry Canada, November 1999).

wishful thinking, but we like to think that in some other countries a trustmark from Canada would begin with an aura of credibility. Consequently, a new web seal designed specifically to signify a Canadian e-commerce code (whether based in law, a standard or a set of principles) may garner initial positive attention that could be built upon.

One cannot presume that a favourable assessment of the feasibility of a particular e-commerce standard will be shared by an SDO that may be approached to coordinate development of the standard. Before agreeing to take on projects, the CSA and other SDOs carry out their own intensive evaluations of feasibility. After such an assessment, the SDO could decide that it was not worthwhile to put resources into developing a recommended e-commerce standard.

## 7. **CONCLUDING OBSERVATIONS ON THE NEED FOR AND FEASIBILITY OF E-COMMERCE CONSUMER STANDARDS**

Although there is implicit support for development of e-commerce standards in many parts of this Overview document, it seems appropriate to ask directly: "Are standards needed and feasible for business-consumer relations in the electronic marketplace?" The answer would depend on who is responding. The writer has concluded that the answer is "Yes, but it would take awhile to get there, so interim measures are needed." There is no public clamour for e-commerce standards, but Canadian businesses and governments may decide that backing development or adoption of one or more such standards is in their interests or in the national interest.

Since most consumers would not initially know the difference between robust and toothless voluntary codes, adoption of a standard would need to be accompanied by a strong public awareness campaign, endorsement by governments and endorsement by consumer groups.

Consumers might prefer stringent laws and enforcement, to raise levels of protection and comfort for online shoppers. In the absence of strong regulation in the foreseeable future, however, consumer advocates may opt for a regime of principles or standards tied to online certification seals, rather than having to rely on cross-border "self-regulation" by electronic marketers. For governments, merchants and consumers, inside Canada and in other countries, one of the prime attributes of standards is that they may overcome trans-jurisdictional issues. Standards can be harmonized bilaterally and through the ISO and its national partners.

Many SMEs would probably benefit competitively from the higher profile and legitimacy associated with being tied to a recognized standard. A substantial incentive for governments is that by supporting standards development they can accomplish something on behalf of consumers and business while everyone sorts out regulatory approaches to meet the constant marketplace and technological changes associated with e-commerce. Interim steps are needed, however, during the fairly lengthy process of achieving the standard, because a vacuum could quickly be filled by a wider clutter of web seals that

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claim much but signify little underlying consumer protection. The *Canadian Framework (Principles of Consumer Protection for Electronic Commerce)* is an important launchpad for action toward both an eventual standard and interim arrangements that could be tied to a Made in Canada trustmark. (As of February 2000, participants in Canada's Working Group on Electronic Commerce and Consumers, as well as other players, were in the early stages of pondering what steps to take next in those regards.)

For Canadian governments and businesses, one spur to developing standards for Canadian online merchants is that most Canadian online shoppers make their purchases from websites maintained in the United States. Initiation of credible e-commerce standards could help to entice Canadian consumers to buy from Canadian online sellers. If a Canadian e-commerce regime attains a good reputation with consumers in other countries, so much the better. As more charitable donations come to be solicited online, it will also be prudent for Canadian-based charities and non-profit groups to be able to indicate their reliability by displaying a digital (Canadian) trustmark linked to a recognized relevant standard.

Big business, including e-commerce market dominators, may not be as ready to accept standards, as compared to running their own voluntary self-regulation shows. But if they perceive that the market's reach - and hence their own growth potential - is hobbled by consumer distrust, they may promote standards for bottom line reasons. Moreover, even the largest enterprises (or their senior managers) are image-conscious. A successful standards regime could aid in overcoming the disincentives presented by well-publicized electronic marketing fiascos and security breaches.

One cause for business reluctance vis-a-vis new standards is an apprehension that participation in the standards system can be costly. The expense of first placing a company into compliance with a standard can be a deterrent. Corporations have sometimes been surprised at the resources needed to re-orient themselves and achieve conformity when an auditor found them to be non-compliant with an ISO standard and then recommended remedial steps.

Adaptation of ISO 9000's coverage is a potential way to reduce the expense for firms of signing on to e-commerce standards and proving continuing compliance. If an e-commerce standard could be added to the existing package of options for ISO 9000, this would reduce the costs and administrative burden for a firm adopting the e-commerce standard, provided that the firm was already ISO compliant. Being able to assume e-commerce provisions as part of the deal could even spark corporate interest in adhering to the ISO 9000 regime. In the UK, many SMEs are already reportedly using their ISO 9000 compliance as a basis for claiming reliability as e-commerce traders.

For a mixture of business and other reasons, central actors appear to believe that e-commerce standards are well worth exploring. Here is a sampling of the indicators: the e-commerce standards initiatives recommended and started by COPOLCO; Canada's e-commerce Framework Principles - shaped by the multi-party Working Group on Electronic Commerce and Consumers; the commercial marketing of online services by BBBOnline,

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WebTrust, TRUSTe and others to "certify" the privacy protection policies or practices of e-marketers; and the online assurance services being offered or contemplated by consumers' organizations.

The apparent leader of the latter trend is the Which? Web Trader Scheme operated by the Consumers' Association (CA) of the UK. The CA has drawn up a code of practice for online traders.<sup>1</sup> UK companies that agree to adhere to the code may (and must) display the Web Trader logo at their websites. When a UK company applies to display the mark, CA checks on the genuineness of the contact information and other data given to CA by the company. After the firm is accepted for the scheme, CA does random checks and also asks for and responds to any consumer complaints, to ensure that the company keeps to the code. CA reserves the right to remove permission to use its logo in certain situations. The CA website lists "international partners" outside the UK, that are described as managing similar, affiliated schemes in their countries.

The UK Office of Fair Trading (OFT) has proposed creation of a digital hallmark to identify those Internet traders that abide by codes guaranteeing security of payment and privacy of information to customers.<sup>2</sup>

There is reportedly a push now in the international standardization community to permit more cross-recognition of SDO marks and standards from other countries. This tendency could contribute to speeding up of recognition for e-commerce standards and the online trustmarks associated with them.

The actions taken in many quarters to reassure potential customers - with codes and online trustmarks - evince a widespread perception that bracing up consumer confidence is the key to e-market growth. The wave of initiatives responding to consumer discomfort has a downside, however. There is a rapid spread of commercial, non-profit and government services offering to enroll merchants in "certification" programs and to place a corresponding logo on marketers' websites. One strong basis for arguing that e-commerce standards are needed, and soon, is the concern that the wide variety of assurance seals popping up online will increase consumers' confusion and malaise, rather than their confidence.

The arrival of a whole constellation of trustmarks and "seals of reliability" claiming to certify a spectrum of qualities possessed by online merchants could hinder, rather than aid, the fast expansion of consumer e-commerce. Some web seal services have a high profile, but provide only minimal information or protection relevant to online consumers. Many merchants may be attracted to relatively inexpensive services that do not overly burden the vendor, and are more akin to advertising than to consumer protection. At the other extreme are high-cost certification schemes that require a lot of administration, frequent audits and

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<sup>1</sup> The Which? Online website is <http://www.which.net/>.

<sup>2</sup> See the White Paper, "Modern Markets: Confident Consumers", at: <http://www.dti.gov.uk/consumer/whitepaper/>.

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business disruption, and continuing expense. It would be easy for consumers and merchants to become confused. It may become increasingly difficult to sort through the menu of marks and reliability seals and to judge which ones represent substantial benefits to the consumer while being available to the merchant at a reasonable cost.

There is a risk that unless Canadian businesses encourage and participate in standards development relevant to e-commerce, the Web might quickly become overly crowded with US-based schemes claiming, maybe without merit, to be highly protective of consumers. At this stage, any organization can proclaim itself as the champion of consumers on the Internet. Yet good codes and standards that can enter the field early to foster best practices still have a window of opportunity to become well-known and trusted.

Given the Web clutter that is already out there, it would be counter-productive for a large number of competing e-commerce standards and online trustmarks to be generated within Canada. It is thus encouraging that all senior levels of government consult regularly on e-commerce policy and legal issues and that all major stakeholder constituencies have some representation on the Working Group on Electronic Commerce and Consumers.

In the eyes of many, including the writer, development of consumer protection standards for e-commerce appears to be a feasible and worthwhile objective. Such standards would be good for online consumers in Canada and elsewhere. It would be advantageous for Canadian business to establish a solid position and reputation internationally in the early stages of e-commerce standardization and online certification. In the three individual feasibility studies, the writer considers further the directions that any standardization efforts should take.

**THE FEASIBILITY OF A STANDARD PERTAINING TO  
COMPLAINTS HANDLING IN ELECTRONIC COMMERCE**

**1. COMPLAINTS HANDLING IN THE ELECTRONIC MARKETPLACE**

**1.1 Complaints Handling for Consumer Transactions**

When a marketer in any form of commerce has an in-house (firm-to-customer) complaints handling mechanism that meets a recognized standard, this should increase confidence in the vendor's reliability. If it is easy to lodge complaints and these are handled effectively and fairly, customers are more likely to remain loyal to a product, service or merchant. A more complete complaints management scheme would also provide for systematic measures to prevent complaints.

If one were to be developed, a general Canadian standard for internal handling of consumer complaints would probably cover subject matters similar to those addressed in the Australian Standard on Complaints Handling (AS 4269-1995). Under the heading "Essential Elements of Effective Complaints Handling" the Australian Standard discusses the following components: commitment, fairness, resources, visibility, access, assistance, responsiveness, charges [no charge to the customer], remedies, data collection, systemic and recurring problems, accountability and reviews [of the standard].<sup>3</sup>

**1.2 Adjusting to the Electronic Marketplace**

(See also sections 2 and 3 of the Overview document that accompanies this feasibility study.)

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<sup>3</sup> Particularly regarding complaints handling in Australia, the author owes much to documents furnished by Bill Dee, who has served as Chair for the drafting committee of AS 4269. Of particular interest was Bill Dee's seminar paper "The Essential Elements of Complaints Handling: a Discussion of the Australian Standard on Complaints Handling", dated 26 March 1998.

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Online merchants' websites should include clear information on their complaints procedures, explaining to consumers how to go about making a complaint, whom to contact, and the likely response time for responding to communications. Although offering a good complaints handling scheme is always a strategy for building consumer loyalty, a core issue with e-commerce is the need to gain a customer's trust in the first place. Another aspect to bear in mind is the need for the marketer's computing software and infrastructure to be stable enough to retain data for years to come.<sup>1</sup> The marketer's system must also feature tough data security precautions.

Characteristics of e-commerce such as those listed in the accompanying Overview paper may make it advisable to develop a specific complaints handling standard for e-commerce. The foundation of such a standard would nevertheless be principles for complaints handling that are relevant to more established kinds of consumer transactions.

If a decision were taken to pursue development of a standard dealing with the handling of complaints arising in e-commerce, at least three possible outcomes may be pondered:

- (1) a stand-alone standard devoted solely to complaints handling in e-commerce;
- (2) a general e-commerce standard, with a section devoted to complaints handling;
- (3) a general complaints handling standard, with a section or supplement devoted to adjustments needed for e-commerce.

The current feasibility study concentrates initially on the first option, by considering the value and viability of creating a separate standard focused solely on consumer complaints in the electronic realm. Most of the analysis for option (1) is relevant for options (2) or (3), however. Standardization work related to option (1) could and probably should be done at the same time as either of the latter two standards described. Some reference to complaints handling principles would be appropriate in any more comprehensive e-commerce standard (option (2)). By this we mean a standard that acts as a benchmark for voluntary codes pertaining to electronic transactions, which is the subject of the third feasibility study. Nowadays, moreover, any general complaints handling standard (option 3) ought to have a section or supplement devoted to e-commerce.

Given the clear progression from complaints handling to dispute resolution for dealing with unresolved complaints (the focus of the second feasibility study), a fourth possibility that should be kept in mind is an e-commerce standard that combines all elements of complaints management together.

Characteristics of electronic commerce that would influence the climate for management of complaints include the uncertainty of obtaining redress when the parties are resident in

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<sup>1</sup> This observation was inspired by the computing system checklist in Attachment A of Bill Dee's paper (*ibid.*), though the writer does not draw on the points in that list.

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different countries. The range of problems faced by consumers who shop online is illustrated by the results of a Consumers International (CI) survey released in September 1999, mentioned in the Overview document that accompanies the present feasibility study. Relevant to complaints prevention and handling, it was notable that one in ten items ordered online never arrived and that 73 percent of merchants failed to divulge crucial contract terms.

CI insists that e-commerce will flourish only when consumers are assured of real protection in the areas of privacy, security and redress. The Vice-President of CI (also chief executive of the Australian Consumers' Association) said this: "Enough people are starting to use e-com that its potential can really take off, or it will start to produce horror stories and will falter from mistrust."<sup>2</sup>

Directly pertinent to our current concerns is the CI survey's finding that in too many cases, traders did not provide consumers with essential information about complaints procedures. Moreover, the identity of the marketer was sometimes unclear, and "real world" contact details were not provided. Over 25 percent of sellers gave no address or telephone number. Without such information, if something did go wrong for a consumer, obtaining redress could be an electronic pipe dream.

## 2. VOLUNTARY ARRANGEMENTS FOR COMPLAINTS HANDLING - RELEVANT CURRENT INITIATIVES

### 2.1 Countries Other Than Canada

One impetus for Industry Canada to consider the feasibility of a standard for complaints handling in e-commerce was the 1995 Australian Standard on Complaints Handling (AS 4269). This standard was arrived at through the style of inclusive consensus procedure followed for National Standards System standards in Canada. After introducing what are listed as the Essential Elements, the Australian Standard elaborates on best practices for their implementation. The standard goes on to examine procedures for processing oral and written complaints, and for minimizing disputes. Most of the provisions amount to common sense that might guide a reasonable and ethical merchant, such as the need to advertise the existence of the complaints handling system, its entry points, and how it functions.

Recognizing that not all complaints are settled amicably, the standard concludes with a brief discussion of principles for resolving complaints that spill over the line into disputes. This section of the standard begins with the following advice: "It is preferable to direct matters towards satisfying the complaint rather than allowing it to remain unresolved and

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<sup>2</sup> Louise Sylvan, quoted in the press release announcing the CI survey findings. The press release is prominently highlighted at <http://www.oneworld.org/consumers/> on the CI website, along with the survey data.

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escalate into a dispute." AS 4269 suggests that a complaints handling process should have the capacity to determine and implement remedies. A merchant may decide that whether or not a person has a legal right to a remedy, it is good customer relations practice to give a customer some redress in defined situations.

Among the sensible tips included in the standard are the wisdom of offering toll free or local call facilities to enhance consumers' access for inquiries and complaints. Such a service makes it much easier for consumers to discuss details of a problem, and might contribute to their peace of mind with regard to electronic shopping.<sup>1</sup> This advice would often become less attractive for consumers situated in a country where the seller is not located. To give an example close to home, many US toll-free lines do not work from Canada, and probably not do work from other countries. Arranging for easy e-mail access to complaints handling is sensible for online sales. But the Australian standard does not mention this alternative. There is also no mention in AS 4269 of direct e-mail connections to sellers, nor of click-on buttons at merchants' websites to let a shopper learn how to lodge and pursue a complaint.

In fact, the Australian standard does not refer to electronic commerce. One speculates that this may be because the standard was concluded in 1995, after a period of consultations and efforts to gain consensus, but just before the mushrooming of attention on e-commerce.<sup>2</sup> Yet the electronic marketplace is a zone in which effective, accessible complaints management, perhaps guided by a standard, seems very much needed to assist consumers and to help assuage their fears.

In May 1999, the British Standards Institution launched a standard on complaints handling (*Complaints Management Systems - Guide to design and implementation* / BS 8600:1999) drawn up through a multi-party consensus process. According to BSI statements (at <http://www.bsi.org.uk>), the new British Standard calls for organizations to show greater visibility, accessibility and support to aid customers who have complaints. It contains advice on planning, resource allocation, complaints analysis and monitoring. It also outlines how organizations can analyze and use complaints as a positive process to improve the quality of customer service.

The British Standard was not viewable by this writer during tries over several weeks at the BSI website. Other pertinent information was located at the website of the UK Office for Fair Trading (<http://www.offt.gov.uk>), in a report from a 1998 UK conference. The

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<sup>1</sup> Toll-free numbers answered 24 hours per day (at least on weekdays) and easy e-mail complaint/inquiry routes were among the recommendations made by this writer in an earlier study of e-commerce practices: *Voluntary Practices and Standards for Consumer Relations in Electronic Commerce* (1998/1999), unpublished research study for the Office of Consumer Affairs, Industry Canada. Where the merchant has the resources, phones ideally should be answered by a human being. Smaller firms ought to have voice mail outside regular hours, and a policy of calling back consumers within 24-48 hours.

<sup>2</sup> It was a couple of years after this that major studies on e-commerce were published in many countries, and that the Canadian Marketing Association amended its own Code of Practice to insert provisions on electronic media, including the Internet, e-mail, interactive kiosks, databases and computer-based information services.

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document reported praise for the draft standard because it "permits proportionate arrangements for the size of the business concerned so that any small business can operate such a system at minimal bureaucracy and cost". It could be improved however, said the commentator, by a requirement that the marketer name the person who would deal with the complaint. The BSI draft also reportedly did not describe the operation of external (independent) dispute resolution systems. The Australian Standard does deal with this topic, both in AS 4269 and in a separate new standard on managing of disputes that can arise from unresolved complaints (discussed in the second feasibility study in the current series).

In October, 1999, the Consumer Affairs Division of Australia's Department of the Treasury issued draft guidelines ("Exposure Draft") re "Building Consumer Confidence in Electronic Commerce: A Best Practice Model for Business". The intention is that the Best Practice Model will be adapted to form an Australian Standard. One of the draft provisions outlines minimum requirements for adequate complaints handling related to e-commerce transactions:

### Internal Complaint Handling

1. Businesses should establish fair and effective internal procedures to address and respond to consumer complaints and difficulties:
2. within a reasonable time;
3. in a reasonable manner;
4. free of charge to the consumer; and
5. without prejudice to judicial redress.
6. Businesses should provide clear and easily accessible information to consumers on complaints handling procedures.
7. In establishing complaints handling procedures, businesses should have regard to the Australian Standard on Complaints Handling (AS 4269).

Public consultation on the Best Practice Model has been occurring through a combination of written submissions and public workshops. The deadline for written submissions was 26 November 1999.

## 2.2 International Organizations

In the autumn of 1998, Consumers International called for the finalization of guidelines for electronic commerce, referring to the *Guidelines for Consumer Protection in the Context of Electronic Commerce*, which had then been under discussion for two years within the OECD. The guidelines cover such areas as supervisory jurisdiction, collection of personal information and consumer redress for problems. CI opined that business opposition had been one of the main stumbling blocks to passage of the guidelines and alleged that industry was lobbying hard to weaken them - by turning the detailed, practical content into a set of vague general principles. CI naturally opposed such a move.

According to CI, the OECD was "the only governmental transnational body that has taken on the task of developing a set of self-regulatory consumer protection guidelines that could provide a framework for global cross-border electronic commerce".

### 2.3 Canada

Canada's Working Group on Electronic Commerce and Consumers, composed of representatives of consumers, business associations and governments, produced the *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework*<sup>1</sup>. These guidelines could provide a foundation for voluntary online certification scheme measures, perhaps centred on a standard, related to consumer information, contract formation, privacy, security and redress. Principle 5 deals with the need for reasonable complaints handling and dispute resolution facilities for online consumers and sellers:

#### Principle 5: Redress

Consumers should have access to fair, timely, effective and affordable means for resolving problems with any transaction.

- 5.1 Vendors should provide adequate resources to handle consumer complaints efficiently and effectively.
- 5.2 When internal mechanisms have failed to resolve a dispute, vendors should make use of accessible, available, affordable and impartial third-party processes for resolving disputes with consumers. However, vendors should not require consumers to submit to such processes.
- 5.3 Governments, businesses and consumer groups should work together to develop appropriate standards for dispute resolution mechanisms.
- 5.4 So that consumers are not disadvantaged, governments should cooperate in the development of clear rules regarding the applicable law and forum, and the mutual enforcement of judgements [sic], in the event of cross-border disputes.

More stress and detail is applied to management of disputes than to complaints, but the opening summary of the Principle, read in conjunction with paragraph 5.1, constitutes a significant commitment by vendors. Principle 5 will be revisited by the writer in the feasibility study concerning a standard on disputes management.

## 2. **ADVANTAGES AND DISADVANTAGES OF A STANDARD AS COMPARED WITH REGULATION - THE CASE OF COMPLAINTS HANDLING**

One oft-cited benefit of a standard is that it might aid in side-stepping possible conflict among federal, provincial, and territorial jurisdictions and between national jurisdictions. That consideration is relevant to all interested parties. Other factors relevant to comparison

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<sup>1</sup> These were released November 9, 1999, and are available through Industry Canada at <http://strategis.ic.gc.ca/oca/>.

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of legislation and e-commerce standards are described in section 4 of the Overview document that accompanies this feasibility study.

### **3.1 The Consumer Perspective**

Given a clear choice, consumers would probably opt for strong enforceable laws pertaining to e-commerce, to prevent complaints from arising and to protect their interests in the event of an unresolved complaint. Many consumers would be unable to overcome their discomfort with Web-based buying without the security of either direct government regulation or evident regulatory backup for any voluntary regime. In statements accompanying its September 1999 survey release, CI said that the problems shown by the survey indicate a real need for "cyber rules of conduct", without specifying whether these should be laws, standards or other options.

In October 1998, CI had called upon governments to take measures to protect consumers' rights to information, privacy, security and redress in the context of electronic commerce. CI then welcomed the OECD's commitment to develop consumer protection guidelines for the electronic world, but contended that guidelines are not enough: "Online businesses must be legally obliged to respect basic consumer rights just as other businesses are, and online consumers must have effective recourse in the event that they are wronged." CI also called on the OECD countries to expand and strengthen their existing consumer protection laws so as to address problems that consumers experience when shopping online.

Options for private consumer legal action in the global marketplace include class or representative lawsuits involving product liability claims. More common types of private consumer actions may not be realistic in most cases, because the legal remedies now available for cross-border disputes (and for domestic disputes) will often not be adequately quick, effective, inexpensive and easily accessed.

Cross-border claims encounter both legal and practical hurdles. Transnational disputes typically give rise to arguments about jurisdiction, choice of laws and the enforceability of foreign judgements. These complications, together with practical obstacles such as time, distance and cost, tend to make international litigation a complex, expensive and drawn-out process. Merchants can make this more complex for consumers by insisting in the purchase agreement that the law of the vendor's jurisdiction applies to any transaction. The majority of transactions via the Internet will not involve large amounts of money. Even for those that are for higher sums, such as car purchases and art items purchased by auction, legal recourse to realize on cross-border complaints would be agonizingly difficult, costly and risky. For consumers and arguably for merchants as well, efficacious internal complaints handling modeled on a standard would be a superior alternative.

### **3.2 The Business Case**

#### **3.2.1 Is It Good for Business?**

General issues are covered in the Overview document at part 4.3.1.

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There is a supposition that business organizations prefer controlling their own behaviour through a voluntary regime, because it is seen to be less onerous and less expensive than legislation, as well as more flexible. Firms and marketing associations often turn to voluntary measures because of the threat of new regulation. These perceptions apply both to ordinary voluntary codes and to formal standards, but standards can bring more certainty and credibility to a voluntary scheme. Governments may refrain from primary regulatory activity if a sector, such as e-commerce retailing, shows it is willing and able to manage its own activities and offer reasonable methods for consumers to obtain remedies for complaints.

A standard on complaints handling could be flexible enough to deal with the rapid pace of change in e-commerce, yet provide a menu of best practices that help online marketers to give reassurance to reluctant shoppers.

It is standard thinking that if a voluntary arrangement offers meaningful business inducements, firms will want to participate. One such inducement presented by a standard on consumer complaints handling, both during its development and in its implementation, is the reality that all businesses need to know how to handle consumer complaints well, for all retail avenues. Customer feedback resulting from systematic and well-recorded handling of complaints can be an important source of guidance for improvement of an organization's products or services, and this could be especially important for a new outlet like the electronic marketplace.

Benefits often associated with adherence to a standard (and sometimes linked to less formal voluntary schemes) include access to information, technology and marketing tools not available to others. For example, as Industry Canada's Voluntary Codes Guide notes, real estate brokers who comply with a particular code gain access to the Multiple Listing Service, which lists properties for sale and people looking for properties. A complaints handling standard for e-commerce could entail valuable access to knowledge and tools of a specialized nature (e.g. software, mediation advice or data security expertise).

### **3.2.2 Possible Differences Between the Perspectives of Large Businesses and Those of Small and Medium Enterprises**

General issues are covered in the Overview document at part 4.3.2. One additional issue to be considered here is the relative capacity of a firm, based on its size and what it sells, to set up a complaints handling system with full access and rapid response. A standard may need some gradations of commitment among business participants with differing capacities.

### **3.3 The Government and Regulatory Side**

General issues applicable to this feasibility study are covered in the Overview document at parts 4.1 and 4.4. A major question is whether differences between e-commerce and other kinds of consumer transactions warrant allocation of resources by governments for development of new or different regulatory or quasi-regulatory instruments.

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Although, as the Overview observes, existing consumer protection law can be applied and adapted to cover electronic consumer transactions, government action to garner protections or redress for consumers will encounter most of the trans-jurisdictional obstacles that already face private litigation. A standard on complaints handling related to e-commerce, if adopted by authorities and companies in many countries, could help to overcome problems presented by complaints involving online sellers and consumers located in different jurisdictions.

The speed of change in electronic marketing may call into question the wisdom of stepping in too early with laws that may become quickly outmoded. There are considerable trans-jurisdictional issues to be resolved. Using existing law as a foundation, but piloting new ideas through a flexible but rigorous voluntary standard, could be a prudent interim course.

#### **4. ADVANTAGES AND DISADVANTAGES OF A STANDARD AS COMPARED WITH AD HOC VOLUNTARY CODES - THE CASE OF COMPLAINTS HANDLING**

##### **4.1 The Consumer Perspective**

General issues are covered in part 5.1 of the Overview document that accompanies this feasibility study.

Consumers customarily are wary of voluntary arrangements, as compared to laws. For e-commerce, a consensus standard developed through an SDO could be an acceptable in-between mechanism which creates a moderate level of obligation for businesses, along with the likelihood that failure to comply would lead to tangible business consequences. Given the amount of time it may take to achieve a standard, however, Canadian consumer representatives may wish to push additionally for the rapid adoption of merchant practices based on the existing multi-stakeholder agreement on e-commerce, the Canadian *Framework Principles*.

##### **4.2 The Business Case**

General issues are covered in part 5 of the Overview paper that accompanies this feasibility study.

###### **4.2.1 Is It Good for Business?**

Since online merchants face an unusual pattern of consumer distrust, it would seem worthwhile for the industry to make the effort to ensure that complaints are handled well, to build customer loyalty. A good system could offer greater comfort to consumers and perhaps impress the media that follow electronic commerce developments. Part of the answer could be an e-commerce standard on complaints handling, tied to a plan for publicity and compliance assurance. Canadian businesses may want to ensure that global consumers associate Canadian online merchants with fair and workable regimes for complaints handling. There could be a competitive advantage to being first online with a sensible set of e-commerce standards covering this problem area. In that regard, it may be in the interest of Canadian marketers to work in the interim for the diffusion of e-commerce merchant practices based on the Canadian *Framework Principles*.

###### **4.2.2 Possible Differences Between the Perspectives of Large Businesses and Those of Small and Medium Enterprises**

Many large businesses already have effective voluntary internal complaints handling arrangements. They can afford to offer automatic refunds to dissatisfied customers, thus being able to avoid both extended complaints handling and subsequent dispute resolution travails. They may not be attracted to the idea of a standard that could offer a benefit to smaller competitors.

Similarly, both SMEs and larger firms that subscribe to an industry sector voluntary code that has some kind of complaints handling scheme may be content with their current set-up.

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Establishment of a new scheme may assist their business rivals. Many smaller businesses, however, are not in sectors with a voluntary code. They compete against online giants that have become e-commerce brand names. Smaller firms may feel that joining onto a reputable e-commerce standard for complaints handling will assist their operational efforts and even help to level the competitive playing field. By doing so, they might attract higher levels of consumer trust and interest.

Larger firms may choose to favour standards if they accept the view that if shoddy treatment of consumers is tolerated by the industry, the media will continue to report scandalous incidents, droves of consumers will say "Why bother with the Internet except for product research?" and regulators will feel pressured to protect shoppers (voters) through tougher legislation. Since effective complaints handling will benefit a firm anyway, why not buy into a standard that also gives credibility to the fledgling marketplace? Joining on to a standard, and helping to formulate it through a standards development body, can do no harm to a big enterprise - which probably operates decent complaints management mechanisms already.

### **4.3 The Government and Regulatory Side**

General issues are covered in part 5.3 of the Overview paper accompanying this feasibility study.

Standards may be more attractive to regulators than less formal voluntary arrangements, because they seek greater uniformity across an industry and across a country. They are also tied to a world system that assists Canada to meet its international obligations. Standards are further along the road toward law than are other voluntary options, and are more likely to achieve public goals that legislation is expected to foster. Moreover, if a standard on complaints handling were negotiated through the mechanisms of official SDOs, (as compared to other voluntary arrangements) governments would have direct input into the provisions developed, and could ensure that they do not undermine existing law.

If a standard on complaints handling for e-commerce helped to spread best practices in this area, that would reduce pressure to enact and apply new legislation to protect consumers. Standards (as compared to regulation) may not be the preference of consumer advocates. If weak voluntary codes or practices for handling of complaints sprang up everywhere and further damaged the reputation of the electronic bazaar as a safe place to shop, the clamour would be for enforced laws, not for standards.

**5. WHAT WOULD BE AN APPROPRIATE PROCESS FOR COORDINATING DEVELOPMENT OF AN E-COMMERCE STANDARD ON HANDLING OF COMPLAINTS?**

General issues are covered in parts 2.2, 2.3, 2.4, 6, 7 and 8 of the Overview document that accompanies this feasibility study.

If Canada took a lead role in developing a standard covering complaints handling in electronic commerce (either as a stand-alone document or as part of a larger package), this would furnish an opportunity to ensure that the standard was well designed and well perceived by the various interests concerned. The attractiveness of engaging a national standards body to develop standards for electronic commerce is heightened in those countries that, like Canada and Australia, employ a multi-stakeholder consensus system to arrive at an official standard. Progress in Canada could spark international work on a global standard that addresses e-commerce complaints handling.

It must be recognized, however, that just as Canada is in a leading position relative to privacy standards, Australia is at the forefront with respect to complaints handling. Standards Australia has amassed considerable experience in producing and administering its 1995 complaints handling standard. Moreover, the ISO is contemplating using the Australian standard as the basis for its own work on a global complaints handling standard. Australia has also done considerable work on general e-commerce principles. In view of these factors, although Canada has the capacity and background for developing an e-commerce complaints handling standard, Canada should think carefully before giving priority to development of its own stand-alone standard on complaints handling in e-commerce. A possibility to consider is an effort by Canada and Australia to work jointly toward a specialized e-commerce standard on the handling of consumer complaints.

Canada could adapt Australia's standard on complaints handling, adding provisions directly pertinent for e-commerce and for Canadian conditions. Canada could then devote more resources to developing other e-commerce standards for which there is less of an existing foundation in other national systems. This approach could speed up the advent of, and increase the feasibility of, the proposed complaints handling standard and other possible standards.

Among sources from which ideas could be drawn to update Australia's AS 4269 would be the Customer Charter adhered to by Australian Associated Motor Insurers (AAMI), the Code of Ethics & Standards of Practice of the Canadian Marketing Association (CMA) and the new British Standard on complaints management systems (see part 2.1 above). Another source of inspiration for a standard would be the following provision that merchants agree to, among other terms, in the "Which? Web Trader" scheme operated by the Consumers' Association in the UK:

## Handling complaints

You must deal with complaints effectively. Any system for handling complaints must be: fair; confidential; effective; easy to use and well-publicised; speedy - you should have time limits for taking action and telling customers what you are doing; informative - so that you know which services you need to improve; simple to understand and use; and checked - to make sure that it is working well and getting better.

The CA Web Trader provision directs readers to a UK government website through which one can discover "more details about good systems". The writer applauds the fact that the CA page also provides a click-on link to permit uncomplicated access to pages at the government site.<sup>2</sup> Electronic links to resources on advice, policy and law - helpful for both merchants and consumers - should contribute to the success (and thus the practical feasibility) of the online version of a consumer protection standard.

On the international plane, Canada and Australia could together promote updated national versions of Australia's complaints handling standard, adjusted for e-commerce. Canada could also, or instead, strive to ensure that the global standard being negotiated through the ISO takes e-commerce best practices on board. Standards development nationally and internationally on complaints handling in e-commerce would be carried out in tandem, each process learning from the other. That has occurred with respect to privacy principles and e-commerce practice principles being addressed in Canada and by the Organization for Economic Cooperation and Development. Both the OECD and Canadian initiatives include reference to complaints handling. OECD deliberations will continue to cross-pollinate with efforts by any SDO that takes on the challenge of creating an e-commerce complaints handling standard. The exchange of ideas might slow down both processes, but is no doubt required by international accords and may add to the feasibility of reaching eventual consensus on a standard for management of e-commerce complaints.

Private sector guidance on voluntary principles for handling of complaints for e-commerce could be considered as another option. Commercial interests and associated "non-profit" organizations have developed or are developing guidelines or purported "standards" for e-commerce. Some contain reference to complaints handling practices. But true consensus procedures involving consumer and government input are not a required component of the process for forming current and suggested private sector codes of practice. Such efforts are not likely to generate strong confidence from consumer representatives. The initiatives are too closely tied to industry and would not involve serious consequences for firms that do not provide ethical or fair complaints handling outcomes. It is arguable, for instance, that services offered by the BBB have not achieved a widespread level of strong consumer trust during the decades that the BBB has been in operation.

With respect to the feasibility of a standard on complaints management being introduced internationally, we should recall that in May 1999 the membership of ISO's consumer

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<sup>2</sup> <http://www.servicefirst.gov.uk/1998/complaint/>

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policy committee unanimously supported a proposal for the development of a complaints handling standard. The writer anticipates that support could also be found for ensuring that a resulting ISO standard would be applicable to e-commerce.

## 6. **THE NEED FOR AND FEASIBILITY OF AN E-COMMERCE STANDARD ON COMPLAINTS HANDLING**

General issues are covered in part 8 of the Overview document that accompanies this feasibility study.

In the writer's opinion, it is feasible for Canada to promote a standards approach to address the handling of consumer complaints arising from e-commerce marketing and transactions. Any standard should not be seen as a substitute for laws that can and will cover similar territory, but as a realistic additional instrument that acknowledges the limitations both of law and of voluntary arrangements in dealing with trans-border e-commerce.

Because of particular consumer reluctance to shop online and the need to offer alternatives to the weak complaints handling practices used by many online sellers, a standard covering e-commerce consumer complaints would be valuable. Even allowing for special wrinkles that are related to the electronic marketplace, a strong foundation of precedent exists for a complaints handling standard. Perceptible benefits can be foreseen for both merchants and consumers and implementation of e-commerce components of an overall complaints handling system may not be very costly for business. Thus, it might be possible to achieve fairly quickly a complaints handling standard for e-commerce. If enough firms bought into such a standard and helped to spread awareness of an accompanying online trustmark, this could ease the way for other e-commerce standards to follow.

The general issues involved in handling consumer complaints are well known. Complaining customers in every kind of marketplace, for instance, would prefer having easy access to front-line staff who have the competence and authority to respond promptly and effectively. The Australian Standard presents a fine foundation for any entity that decides to proceed with a standard adapted specifically to e-commerce. What's more, all sellers need to handle consumer complaints, and fear of not getting redress for problems encountered through electronic purchases is one major barrier holding back consumers.

An e-commerce standard on complaints mechanisms would entail similar issues to those pertaining to complaints management for any kind of consumer marketing, plus additional issues. In any up-to-date standard dealing with consumer complaints, e-commerce issues would need to be included. In recent Canadian discussions of e-commerce, representatives of SDOs have asserted correctly that standards pertaining generally to complaints handling do not exclude application to e-commerce transactions. In the writer's opinion, however, most consumers will want the assurance of having a standard's relevance to e-commerce explicitly spelled out.

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Setting up of internal procedures to deal properly and consistently with online consumer problems would be mostly within a merchant's own control, and may be relatively easy and inexpensive for an online firm to achieve. Some Canadian businesses that market online may prefer that Canada push quickly for a standard on consumer complaints handling, rather than for e-commerce standards that are potentially more costly and complex, such as a standard for independent dispute resolution or a broader benchmark standard for e-commerce voluntary practice codes. After reading the other two studies and the Overview document in the present series, others may be persuaded that a worthwhile system for complaints handling in e-commerce would be more feasible if it is part of a general standard on best practices for voluntary e-commerce codes - covering dispute resolution and other matters.

Though a e-commerce complaints standard seems do-able, the writer would not advise developing a stand-alone standard on complaints handling. The links between complaints handling and dispute resolution would suggest as a minimum that these two parts of a continuum be linked together in an online commerce standard. Earlier studies done by the writer<sup>1</sup> pointed to the desirability, from a consumer perspective, of a cluster of good online business practices. Fair and effective complaints handling was only one of the features that a sophisticated online shopper might look for. The writer observes that the Web Trader scheme initiated by the UK Consumers' Association in mid-1999 bundles complaints handling with other features in its e-commerce code.

Given the resources of the various stakeholders, however, it may be feasible for Canada to work effectively on developing only one standard for e-commerce initially. Representatives of consumers and smaller businesses interested in e-commerce may not want to devote limited energies toward creating a standard dealing with an area that, though important, is not at the top of the list of online shoppers' expressed concerns. Big online merchants will likely have a good complaints handling system in place, and may not see a benefit in devising a standard.<sup>2</sup> For the above-stated reasons and others set out in the third feasibility study, the writer would recommend that priority be given to a more wide-reaching standard, analogous to the Canadian *Framework Principles*. Any general standard on e-commerce voluntary codes (contemplated in the third feasibility study) would need to refer to minimum acceptable attributes of a complaints handling regime.

We have noted that Australia's complaints handling standard does not deal with electronic commerce. Nonetheless, we observe that, rather than taking steps through the Australian Standards process to bring in additional provisions on e-commerce complaints, Australia has chosen to situate the latter inside a general "exposure draft" standard touching on many facets of e-commerce.<sup>3</sup>

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<sup>1</sup> The resulting report's title is given at note 4, *supra*.

<sup>2</sup> This observation was echoed by a representative of BBBOnline who spoke at a major e-commerce conference held in Toronto in December 1999.

<sup>3</sup> "Building Consumer Confidence in Electronic Commerce: A Best Practice Model for Business", October 1999. Available at: <http://www.treasury.gov.au/ecommerce/>.

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The feasibility of future e-commerce standards will depend partly on the credibility gained or lost for the electronic marketplace by consumer and business experience with the first e-commerce voluntary codes, including standards, that are placed online. It is hoped that the present feasibility study and its three companion papers will assist stakeholders in determining the next appropriate paths to take in the e-commerce realm.

## **THE FEASIBILITY OF A STANDARD PERTAINING TO DISPUTE RESOLUTION IN ELECTRONIC COMMERCE**

### **1. DISPUTE RESOLUTION IN THE ELECTRONIC MARKETPLACE**

In conjunction with this study, it is recommended that the reader review both the companion study on the feasibility of a complaints handling standard and the Overview document that introduces both studies.

#### **1.1 Dispute Resolution for Consumer Transactions**

For any merchant, two advisable elements of a management system for consumer complaints are measures to prevent complaints from escalating into unsettled conflicts and a reasonable mechanism through which such disputes can be resolved when they do occur. If that external mechanism meets a recognized standard, this could increase consumer confidence in the mechanism's credibility as well as enhance the reputation of the merchant. Factors to weigh would include the accessibility, cost, independence and effectiveness of the scheme as well as the ability of the consumer to collect on any favourable outcome.

A general standard for dispute resolution would presumably support best practices for resolving disputes arising from any form of selling. Its scope of coverage would resemble that addressed in the Australian Standard on Dispute Resolution issued in October 1999: *Guide for the Prevention, Handling and Resolution of Disputes, AS 4608-1999*. The Australian Standard discusses the following components: essential principles for the prevention, handling and resolution of disputes; processes for the prevention of disputes; processes for the handling of disputes; and processes for the resolution of disputes.

A workable and fair dispute resolution regime is a logical extension of a good complaints handling system. The feasibility of a standard on complaints handling would be increased by the development of a companion standard on dispute resolution, and vice versa. It may be sensible to create a standard that covered both aspects of complaints management together. Even better, the writer would suggest, would be inclusion of both within a more broadly-focused e-commerce standard.

#### **1.2 Adjusting to the Electronic Marketplace**

Many factors particular to e-commerce are described in sections 2 and 3 of the Overview document that accompanies this feasibility study. Some of the problems faced by consumers shopping online are highlighted by the results of a Consumers International (CI) survey released in September 1999, described in part 1.2 of the writer's feasibility study on a complaints handling standard, and in other surveys that are mentioned in part 2.1 of the Overview document.

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Online merchants' websites ideally should include clear information on any dispute resolution options that would be available in instances where internal complaints handling procedures fail to lead to a settlement. This information could explain, in introductory fashion, how a consumer might proceed to the stage of dispute resolution and the likely time involved. A good dispute resolution scheme may generally be a way to prevent consumer dissatisfaction from escalating into litigation and/or bad publicity for the marketer. In e-commerce it also could help to win over some consumers in the first place. Another matter to note is the necessity for a marketer's computing system to be stable enough to retain data for many years and to possess tough data security protections.

When a dispute arises from an electronic transaction, the uncertainty of being able to attain a resolution is escalated when the parties are situated in different countries.

## 2. VOLUNTARY ARRANGEMENTS FOR DISPUTE RESOLUTION - RELEVANT CURRENT INITIATIVES

### 2.1 Countries Other Than Canada

Among the reasons that Industry Canada chose to consider the feasibility of a standard for dispute resolution in e-commerce was the development of two Australian instruments, the (then) draft standard on dispute resolution and the 1995 standard on complaints handling. The Australian standard on disputes management, issued as final in October 1999, describes best practices for implementation of procedures for dispute prevention and handling.

The new standard is not a freely available public document, but its general outlines can presumably be discerned from looking at earlier drafts and from examining a speech given its official launch. If it is consistent with draft versions that the writer has reviewed, the 1999 Australian dispute resolution standard does not cover electronic commerce. Nor does the aforementioned speech mention e-commerce.<sup>1</sup> Yet the e-commerce realm is one where a standard (or an alternative approach) seems most needed, in order to respond to the low confidence level of consumers. A further difficulty with using the Australian Standard as the basis for a consumer-related standard is that the standard seems designed to cover much more than business-to-consumer transactions.<sup>2</sup> Excerpts from the presentation suggest broad purposes for the new instrument:

...In launching this standard I believe that this standard will have a major impact in the way Australian companies, the public sector and non-corporate sector e.g. sporting bodies conduct their affairs.

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<sup>1</sup> Allan Fels, Chairman, Australian Competition and Consumer Commission, *Launch of the Australian Standard - Guide for the Prevention, Handling and Resolution of Disputes*, available online through the AUCC website: <http://www.accc.gov.au/>.

<sup>2</sup> Fels, at note 1, *supra*.

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...Disputes typically can involve an organization's employees, suppliers (particularly small business suppliers), and the downstream users of the organization's goods or services.

Among other helpful elements, the standard reportedly gives advice on designing a system, advice that could be useful for setting up dispute resolution mechanisms for any kind of organization. The standard also provides information on organizations that are involved in ADR, a glossary of terms and examples of dispute resolution agreement clauses.

Rather than covering e-commerce consumer disputes within the *Guide for...Resolution of Disputes*, it appears that Australia decided to include online dispute resolution within an overall standards package concerned with e-commerce. In October 1999, the Consumer Affairs Division of Australia's Department of the Treasury issued draft guidelines (an "Exposure Draft" standard) called "Building Consumer Confidence in Electronic Commerce: A Best Practice Model for Business". One of the draft provisions outlines minimum requirements for dispute resolution related to e-commerce transactions:

### External Dispute Resolution

1. A business should provide clear and easily accessible information to consumers on any independent customer dispute resolution mechanism to which the business subscribes that is capable of dealing with consumer complaints.
2. Such independent customer dispute resolution mechanisms should be:
3. accessible;
4. independent;
5. fair;
6. accountable;
7. efficient;
8. effective; and
9. without prejudice to judicial redress.
10. Where there is no industry based customer dispute resolution facility, information regarding the relevant Small or Consumer Claims Court should be provided.

Public consultation on the Best Practice Model has been taking place through written submissions and public workshops. The deadline for written submissions was 26 November 1999.

A recent voluntary code that operates somewhat like a standard is the Web Trader scheme of the Consumers' Association in the UK. Among other provisions, participating merchants agree to the clauses on handling of complaints (quoted in section 8 of the feasibility study on a complaints handling standard) and the following clauses on dispute resolution:

### Solving disputes

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You must provide details about any procedure for solving disputes you belong to. You must provide details of any Ombudsman scheme or regulator which you belong to. You must be governed by UK law.

The development of these Australian and UK instruments is itself an indication of the need for and feasibility of a standard on disputes management for consumer complaints in e-commerce.

### 2.2 International Organizations

COPOLCO is the Consumer Policy Advisory Committee of the ISO. In May 1999 COPOLCO considered a proposal for the development of several standards by the ISO. The membership of COPOLCO unanimously supported a proposal for the development of a complaints handling standard, while tabling the question of preparing a disputes resolution standard.

In the autumn of 1998, Consumers International called for the finalization of the OECD guidelines for electronic commerce, referring to the draft *Guidelines for Consumer Protection in the Context of Electronic Commerce*. The guidelines include reference to consumer redress measures.

### 2.3 Canada

Canada's Working Group on Electronic Commerce and Consumers, composed of representatives of consumers, business associations and governments, has finalized the *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework*.<sup>1</sup> The principles deal with both the need for effective and affordable complaints handling and the need for a reliable dispute resolution scheme as a backup. The guidelines could provide a foundation for standards on redress for complaints. Principle 5 deals with both complaints handling and dispute resolution facilities for online consumers and sellers:

#### Principle 5: Redress

Consumers should have access to fair, timely, effective and affordable means for resolving problems with any transaction.

5.1 Vendors should provide adequate resources to handle consumer complaints efficiently and effectively.

5.2 When internal mechanisms have failed to resolve a dispute, vendors should make use of accessible, available, affordable and impartial third-party processes for resolving disputes with consumers. However, vendors should not require consumers to submit to such processes.

5.3 Governments, businesses and consumer groups should work together to develop appropriate standards for dispute resolution mechanisms.

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<sup>1</sup> These were released November 8, 1999, and are available through Industry Canada at <http://strategis.ic.gc.ca/oca/>.

5.4 So that consumers are not disadvantaged, governments should cooperate in the development of clear rules regarding the applicable law and forum, and the mutual enforcement of judgements [sic], in the event of cross-border disputes.

More of the provision covers management of disputes than internal complaints handling, but as the summary of Principle 5 indicates, the two mechanisms interact as part of a system "for resolving problems with any transaction". Notably, paragraph 3 of Principle 5, which like all of the Principles was agreed to through a negotiation process involving representatives of key Canadian stakeholders, emphasises the need for these parties "to develop appropriate standards for dispute resolution mechanisms". Recognizing that standards should not undermine protections found in existing law, paragraph 5.5 calls additionally for clear rules to deal with overlapping and conflicting regulation in the event of cross-border disputes. It also calls for the mutual enforcement of judgments.

Similarly to the Australian and UK instruments looked at in part 2.1 above, the *Framework* includes disputes management for consumer complaints within a broad basket of principles on e-commerce.

The University of Montréal has established a Cyber Conflict Resolution Centre, to offer mediation and arbitration services in a number of areas, including electronic commerce, copyright, freedom of expression and privacy.<sup>2</sup> One facet assists consumers and businesses who have disputes in electronic commerce. The Centre's CyberTribunal, recently renamed as eResolution, markets itself as providing conflict resolution services for transactions conducted on the Internet. In eResolution's mediation process, the disputants agree to submit their disagreement to a neutral mediator, who attempts to assist them to reach a compromise. In its Cyberjustice project, the University of Montreal service is partnered with the Online Ombudsman Office of the University of Massachusetts<sup>3</sup> and with the Virtual Magistrate.<sup>4</sup>

### **3. ADVANTAGES AND DISADVANTAGES OF A STANDARD AS COMPARED WITH REGULATION - THE CASE OF DISPUTE RESOLUTION**

As is anticipated by Principle 5 of the *Principles of Consumer Protection for Electronic Commerce* a standard might aid in overcoming possible conflict among federal, provincial, and territorial jurisdictions and between national jurisdictions. That positive feature is relevant to all interested parties. Other factors relevant to a comparison of the advantages and drawbacks of legislation and e-commerce standards are described in section 4 of the Overview document that accompanies this feasibility study. Readers should also look at section 3 of the companion feasibility study regarding complaints handling.

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<sup>2</sup> <http://www.cybertribunal.org>

<sup>3</sup> <http://www-legal.sbs.umass.edu/center/ombuds/>

<sup>4</sup> <http://www.vmag.vcilp.org>

### **3.1 The Consumer Perspective**

Many consumers would be unable to overcome their reluctance to engage in online buying without the comfort of knowing that voluntary regimes are backed by government regulation, including enforcement of established law. Consumers International has consistently said that guidelines are not enough, asserting that online consumers must have effective recourse in the event that they are wronged.

Existing options for private consumer legal actions in the global marketplace include class or representative actions involving product liability claims. More common types of private consumer actions may not be realistic in most cases, because the legal remedies now available for cross-border disputes (and for domestic disputes) will often not be adequately quick, effective, inexpensive and easily accessed. The majority of consumer transactions via the Internet will not involve large amounts of money, and even for those that do, such as car purchases and certain items purchased by auction, taking legal recourse to work out a cross-border conflict will not be a realistic option. Even in cases involving larger sums, legal action could be overly costly and risky.

As the Overview paper observes, existing consumer protection law can be applied and adapted to cover electronic consumer transactions. Yet government action to garner protections or redress for consumers will encounter most of the trans-jurisdictional obstacles that face private litigators. A standard on dispute resolution related to e-commerce, if adopted by authorities and companies in many countries, could help to overcome problems emanating from sales that involve online sellers and consumers located in different jurisdictions.

### **3.2 The Business Case**

The discussion of general issues covered in the Overview document at part 4.3.1 is relevant here.

#### **3.2.1 Is It Good for Business?**

Business organizations very often prefer to manage their behaviour through a voluntary regime. A standard on dispute resolution would be voluntary. It may be flexible enough to deal with the rapid pace of change in e-commerce but credible enough to influence governments to forego enacting unwelcome legislation. A standard would also provide a menu of best practices that could both help online marketers and reassure hesitant shoppers.

Before deciding to participate in any voluntary arrangement for disputes management, firms will want to weigh the economic and organizational benefits. One inducement to seeking a standard on dispute resolution for unsettled complaints is the reality that ethical businesses all need to know how to achieve closure on consumer complaints. This is especially important for a new field like the electronic marketplace. Benefits often associated with adherence to a standard (and occasionally linked to less formal voluntary schemes) include access to information, technology and marketing aids not available to others. A dispute resolution standard for e-commerce could yield valuable access to tools

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and knowledge of a specialized nature such as relevant software, advice on mediation, conciliation and arbitration and expert assistance with bolstering data security.

A summary of several business case arguments in favour of a standard was presented at the October 1999 launch of the Australian Standard, the *Guide for the Prevention, Handling and Resolution of Disputes*:

These include preservation of relationships, reduction of costs and time, confidentiality, encouragement of appropriate solutions, durability of agreements, choice and control of process, and the development of a corporate culture that is "dispute aware" and therefore looking to nip problems in the bud.<sup>5</sup>

### **3.2.2 Possible Differences Between the Perspectives of Large Businesses and Those of Small and Medium Enterprises**

Some issues are covered in the immediately preceding paragraphs, in part 4.3.2 of the Overview document, and in part 3.2.2 of the feasibility study regarding complaints handling. One consistent issue to be considered is the relative capacity of a firm, based on its size and what it sells, to set up a dispute resolution system with full access and rapid response. A scheme associated with a standard may need to permit gradations of commitment by varied business participants, perhaps including the level of required participation fees.

### **3.3 The Government and Regulatory Side**

Relevant issues are covered in the Overview at parts 4.1 and 4.4, as well as in part 3.3 of the feasibility study regarding complaints handling.

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<sup>5</sup> Allan Fels, Chairman, Australian Competition and Consumer Commission, Launch of the Australian Standard - *Guide for the Prevention, Handling and Resolution of Disputes*, page 3.

#### **4. ADVANTAGES AND DISADVANTAGES OF A STANDARD AS COMPARED WITH AD HOC VOLUNTARY CODES - THE CASE OF DISPUTE RESOLUTION**

##### **4.1 The Consumer Perspective**

Many issues are covered in part 5.1 of the Overview document that accompanies this feasibility study.

Consumer advocates usually prefer regulation rather than voluntary arrangements. For resolving complaints coming out of e-commerce, a standard developed through an SDO could be an acceptable compromise. It would create stated obligations for businesses and presumably negative burdens if they failed to comply. Tangible consequences could include loss of a merchant's right to display an online trustmark that is linked to the standard, harmful publicity, loss of consumer trust and potential loss of business. Since it could take years to achieve even a national consensus standard, however, Canadian consumer representatives might ponder pursuit of at least two paths. While working toward a standard, consumers (and interested business representatives) may wish to work as well for the widespread adoption of online merchant practices in harmony with provisions of the Canadian *Framework* Principles.

##### **4.2 The Business Case**

Successful voluntary arrangements for resolving consumer disputes exist already and are not always dependent on standards. Those concerned with attracting and retaining customers for online commerce may wish to promote an e-commerce standard, however, in order to promote the use of good voluntary systems. Canadian marketers might also be advised to work in the interim to support general adoption by marketers of the relevant Principles found in the Canadian *Framework*.

###### **4.2.1 Is It Good for Business?**

General issues are covered in section 5 of the Overview paper that accompanies this feasibility study.

It is in the interest of reputable online businesses to fix consumer confidence problems rapidly, and a strong standard on dispute resolution could help to build credibility. Canadian businesses may want to ensure that global consumers learn to associate Canadian online merchants with fair and workable regimes for disputes management. There could be a competitive advantage to being online early with a credible, effective e-commerce standard covering this problem area.

###### **4.2.2 Possible Differences Between the Perspectives of Large Businesses and Those of Small and Medium Enterprises**

In addition to section 5 of the Overview document, readers should examine part 4.2.2 of the feasibility study regarding complaints handling, and part 3.2.2 (above) of the present study. Being able to tap into organized and credible options for dispute resolution that help to avoid the expense and time loss associated with litigation should be an attractive notion for

any merchant. It may be even more attractive for SMEs. Most vendors could, if motivated, set up an effective internal complaints handling process without the guidance of a standards system. On the other hand, an external dispute resolution vehicle requires collaboration with other entities, whether or not an applicable standard is present. For most companies, the infrequency of their need for an independent outside forum would make it difficult to justify the cost of developing dispute resolution outlets, unless those costs were shared among a number of participants. Whether a firm is part of a sectoral voluntary code or is not part of any such arrangement, a managed standard on disputes resolution could provide a focus for organizing an effective and affordable on-demand system.

#### **4.3 The Government and Regulatory Side**

Some issues are covered in part 5.3 of the Overview paper accompanying this feasibility study.

A standard on disputes management may be more attractive to regulators than less formal voluntary arrangements would be, because it can encourage more widespread consistency in the treatment of consumer interests. National standards are also interrelated with world trading and standards systems that involve international obligations for Canada - which a standard can help Canada to meet. Standards are more akin to law than are other voluntary options, and are more likely to achieve public goals that legislation is expected to foster. If a standard on disputes resolution were developed through a national SDO, as compared to being devised through a less formal voluntary arrangement, governments would have awareness of, and direct input to, the provisions developed. If a standard on disputes management for e-commerce helped to spread best practices in this area, that would reduce pressure to enact and apply new legislation to protect consumers.

### **5. WHAT IS THE APPROPRIATE PROCESS FOR COORDINATING DEVELOPMENT OF AN E-COMMERCE STANDARD FOR HANDLING OF COMPLAINTS?**

Many pertinent issues are covered in parts 2.2, 2.3, 2.4, 6, 7 and 8 of the Overview document that accompanies this feasibility study, as well as in part 5 of the study on complaints handling.

An alternative to developing a standard in Canada is to adapt one from a respected SDO of another country where procedures similar to Canada's National Standards System are followed. On the surface, an obvious current source is Standards Australia's new standard on dispute resolution. As was noted above, however, it appears that the Australian initiative does not deal with electronic commerce. Another difficulty is that the standard covers a wide territory, extending to problems between employers and employees and disputes between businesses and their suppliers.<sup>1</sup> While these are important fields for the

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<sup>1</sup> "This seems consistent with a general broadening of the concept of consumer in Australian commercial practice: "Given the recent changes to [Australia's] Trade Practices Act...the definition of consumer...is quite wide. Under... [the]...amendment the notion of business consumer has been included... The Australian Competition and Consumer

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application of alternative dispute resolution, their coverage in the standard reduces the clarity of the Australian instrument as a precedent for a standard specifically on business-consumer relations.

Canada could presumably work with Australia to develop and/or promote an e-commerce standard on dispute resolution, but Canada should consider drafting its own national standard, based on many sources. Since the ISO has tabled (delayed) its study of an e-commerce standard on disputes resolution, it would not be advisable to await a global standard before starting to work on a national one. Of course Canada would provide input to the formulation of any international standard.

Among sources from which ideas could be drawn for a dispute resolution standard for consumers in e-commerce are the Customer Charter adhered to by Australian Associated Motor Insurers (AAMI), the disputes management regime and tribunal administered by Canada's Cable Television Standards Foundation, the Code of Ethics & Standards of Practice of the Canadian Marketing Association (CMA), the new British Standard on complaints management systems (see part 2.1 above) and provisions from the UK Web Trader scheme operated by the Consumers' Association in the UK (discussed in part 2.1 above and in part 6 of the feasibility study on a complaints handling standard). Also of much value are the tips given on dispute-resolution provisions as one of the "Components of Effective Codes" in Canada's *Voluntary Codes Guide*.<sup>2</sup>

## 6. THE NEED FOR AND FEASIBILITY OF A STANDARD ON THE MANAGEMENT OF CONSUMER-INITIATED DISPUTES IN E-COMMERCE

General issues are covered in part 8 of the Overview document that accompanies this feasibility study.

A standard on management of disputes arising from consumer complaints in e-commerce is feasible, though it is uncertain that a stand-alone standard should be a priority objective. It

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Commission...has asked companies to develop complaint handling systems. The ACCC requires...that the systems not be confined to consumer complaints, but to business consumers and suppliers and other groups including employees..." (Excerpts from an online article by Neill Buck, "How to manage customer complaints", taken from *The Australian Standard Magazine*, November 1998.

<sup>2</sup> Office of Consumer Affairs, *Voluntary Codes: A Guide for Their Development and Use*, 1998, in the online version (<http://strategis.ic.gc.ca>) at page 8.

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is instructive that such a dispute resolution standard is recommended by Principle 5.3 of the multi-party *Principles of Consumer Protection for Electronic Commerce*. A dispute resolution standard would not be a substitute for regulation, but an additional instrument. A standard would respond to the limitations of law and of less formal voluntary arrangements in dealing with problems generated within cross-border e-commerce.

As was noted above, the ISO has been approached with the idea of producing an international standard on dispute resolution. Given the current national and OECD work on electronic commerce principles, the writer anticipates that ISO efforts on complaints handling will eventually lead to a standard that would apply not only to more established marketing, but to e-commerce as well. Although only a complaints handling standard may be studied by the ISO in the near future, there are clear links between complaints handling and disputes management.

Various commercial and non-profit ventures offer dispute resolution services related to e-commerce. These efforts do not generally involve substantial input from consumer organizations. Some services that project an image as problem-solvers are simply vehicles through which consumers can register a complaint about a company on a website, so that other consumers can read about it online.

The online dispute mediation service based partly at l'Université de Montréal, eResolution, is reporting success. Moreover, eResolution's management has opined that a standard is not required to cover dispute resolution in e-commerce, because ventures such as its own are quickly filling the need.<sup>1</sup> Services such as eResolution are practical alternatives to litigation in online business-to-consumer disputes, and would remain so even after the potentially lengthy span before an e-commerce standard could be developed. Up to December 1999, Resolution had assisted in resolving approximately 400 cases. About eighty percent of these involved business-to-consumer disputes. The preferred technique of eResolution for consumer-related matters is mediation, because arbitration has proven too complex. Businesses agreeing to submit problems to the eResolution process may display a related online seal.

The number of for-profit and not-for-profit online dispute resolution services is growing. These may or may not involve a web seal such as that available from eResolution. Most schemes that are supervised by industry lack serious consequences for firms that do not promise or deliver fair and effective dispute resolution practices and outcomes.

The e-commerce versions of problem-solving services run by the Council of Better Business Bureaus benefit from BBB's widespread name recognition and presence in so many locations across North America. Despite hesitations concerning the BBB model as an alternative or precedent for a standard, it must be acknowledged that turning to the BBB may speed up resolution of consumer complaints with BBB member companies. There is a

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<sup>1</sup> Remarks made by an eResolution representative at a conference on electronic commerce held December 2-3 1999 in Toronto.

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facility permitting a consumer complaint to be submitted online, from the USA or Canada. It is notable that among the e-shopping tips for consumers given at its website, the Consumers Union in the United States recommends that consumers look for either the Better Business Bureau Online seal, or a Truste symbol, as indications that a merchant's business practices have been independently audited as being consumer friendly.<sup>2</sup>

Almost all concepts and components applicable to a dispute resolution standard designed for e-commerce would also be relevant for dispute resolution related to more familiar kinds of consumer transactions. If a decision were taken to develop a standard dealing with the resolution of consumer disputes occurring in e-commerce, at least four possible outcomes may be pondered: (a) a standard devoted to dispute resolution in e-commerce situations; (b) an e-commerce standard that combines all elements of complaints and disputes management; (c) a general e-commerce standard, with a section devoted to dispute resolution; (d) a general dispute resolution standard which has a section or supplement devoted to adjustments needed for e-commerce.

Negotiation of option (a) might lead to a separate e-commerce standard on dispute resolution, or to option (b), given that dispute resolution is combined with complaints handling provisions in Principle 5 of the Canadian *Principles*. If standardization work commences toward option (a), the writer suggests that this should not be to the exclusion of option (c), which may be even more feasible, given the precedent provided by the *Principles* Framework itself. Dispute resolution principles would be an important component of a comprehensive e-commerce standard. By this we mean a standard that acts as a benchmark for voluntary codes pertaining to electronic transactions, which is the subject of the third feasibility study.

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<sup>2</sup> <http://www.ConsumerReports.org/>

## **THE FEASIBILITY OF A STANDARD ON THE DEVELOPMENT AND IMPLEMENTATION OF VOLUNTARY CODES FOR ELECTRONIC COMMERCE**

### **1. BACKGROUND AND PURPOSE**

#### **1.1 Introduction**

In many retail sectors, voluntary codes help merchants to guide their own behaviour and allow the merchants to demonstrate to others that they meet stated minimum criteria concerning the products, services and practices which they offer to consumers. Even in the late 1990s, however, very few voluntary codes covered electronic marketing. Yet consumer uncertainty about Internet marketers and transactions is a principal barrier to growth of online sales. The electronic marketplace is ripe for attention, either through regulation or through trustworthy voluntary instruments, which could include national standards.

A confusing variety of voluntary pledges and codes of consumer practice is being advertised online by electronic sellers, but most such promises are not based on instruments that required the consensus of governmental and consumer representatives. Nor are they tied to a system of registration, certification or auditing, as a standard would generally be. It is hard for consumers to judge the strength and veracity of varied promised protections.

Voluntary sectoral codes are gradually being amended to insert reference to e-commerce, as vendors try to attract new business or to pre-empt new kinds of regulation. A precedent for this step was presented by the Code of Practice of the Canadian Marketing Association, revised in 1997/98 to add a section dealing with aspects of the electronic marketplace. Related changes to that code and to other codes have included reinforcement of provisions dealing with privacy in all areas of marketing. The threat to personal, family and financial privacy is one of the main bugbears of consumers with regard to electronic merchandising and shopping.

Although one anticipates an increased number of voluntary pledges and codes from merchants who operate online, there is currently no yardstick or metric equivalent against which to gauge the appropriateness or credibility of these voluntary promises. In other fields of commerce, one method for ensuring that the management practices and other practices of different companies can be both assessed and improved with fair comparability is to establish standards against which claims and practices can be measured.

The present study canvasses the feasibility of a standard that would provide guidance on recommended processes for establishing codes of business-to-consumer practice in electronic commerce and that would suggest minimal categories of consumer relations components for such codes.

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In the introductory pages of the Overview document that accompanies this feasibility study, reasons are given as to why Canadian authorities were moved early in 1999 to examine the concept of e-commerce standards. Among the listed initiatives that inspired Canadian action were these:

(1) the OECD *Consumer Protection Guidelines for Electronic Commerce*, setting out a range of general principles for online marketing and consumer purchases;

(2) the *Principles of Consumer Protection for Electronic Commerce - A Canadian Framework*, arrived at through the Working Group on Electronic Commerce and Consumers;

(3) guides concerning the development of voluntary codes, prepared by the Canadian, Australian and other governments;

(4) research, consultations and conferences on voluntary codes, under the aegis of the UK Office of Fair Trading;

(5) the results of various research, publications and pilot projects on electronic commerce, on voluntary codes and on standards, under the auspices of the Office of Consumer Affairs of Industry Canada.

### 1.2 Special Concerns of the Electronic Marketplace

The above-noted initiatives provide ample indication of a desire by stakeholders in Canada and elsewhere to establish sets of recommended consumer relations practices for electronic commerce. The Overview document that introduces the current study notes in sections 2 and 3 some special characteristics of the electronic marketplace, including consumer attitudes that must be kept in mind when judging or designing e-commerce regulatory or voluntary instruments. One unique factor is the speed with which transactions can be completed online, in writing. A trait that is shared with other methods of long distance selling (but seems to be of greater concern now in e-commerce) is the need to authenticate the identity of the party with whom one is dealing.

Statistical and anecdotal data suggest that the main causes of consumer reluctance to engage in e-commerce are concerns about: the privacy of personal, family and business information that might be collected from an online shopper and possibly passed on to others by the seller; the security of payments, credit information and other financial data associated with the purchase or the purchaser; the identity and reliability of the online merchant; the real quality of advertised products or services; and the consumer's ability to obtain refunds or redress in the event of non-delivery or of other sources of dissatisfaction.

Although problems could manifest in the above-noted categories in any kind of retail arena, consumer perceptions of a need for caution are magnified in relation to the electronic marketplace. The report of a survey by Consumers International, published in September

1999, concluded that e-commerce will blossom only when consumers can see real protection in the areas of privacy, security and redress.<sup>3</sup>

### 1.3 What Kind of Standard?

The present feasibility study focuses on whether a standard could and should be developed to provide guidance on the design and general outlines of voluntary codes drawn up by a company or an industry association for online retail commerce.

A font of detailed guidance on how to establish and maintain an effective voluntary code is the Voluntary Codes Guide (the Guide) published by Industry Canada.<sup>4</sup> Publications with a similar range of practical information and advice have been written and distributed in Australia, the UK, and no doubt elsewhere. A glance at a *selection* of the subject headings and sub-headings in the Guide illustrates the value that this volume would have as one of the foundational sources for a standard on e-commerce voluntary codes:

\* \* \*

Common Characteristics of Good Voluntary Codes  
Conditions Conducive to Successful Code Development  
Sector-wide Codes  
Processes for Developing Effective Codes

An Eight-step Model for Developing Codes

*Gather information*  
*Preliminary discussions with major stakeholders*  
*Create a working group*  
*Preliminary draft of the code*  
*Consultations on preliminary draft*  
*Publication and dissemination of the code*  
*Implementation*  
*Review*

Components of Effective Codes

*A "plain language" statement of code objectives*  
*Clear, concise obligations*  
*[Provisions] governing compliance*  
*Provisions creating penalties for non-compliance*

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<sup>3</sup> The study is called "Consumers@shopping: An international comparative study of electronic commerce" and is available at: <http://www.oneworld.org/consumers/campaigns/> by clicking on "electronic commerce". The survey is briefly discussed in part 2.1 of the Overview.

<sup>4</sup> Office of Consumer Affairs, Industry Canada, *Voluntary Codes : A Guide for Their Development and Use*, 1998. Available through <http://strategis.ic.gc.ca/oca/>.

*Dispute-resolution provisions*

*Periodic review and amendment*

*Financing and commitment of key human resources*

### Effective Implementation of Voluntary Codes

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A general standard on voluntary codes would amount to a strengthening of the principles expressed in the Guide. At present the Guide lists recommendations for how companies and industry associations should proceed when developing and implementing a voluntary code, but firms and industry sectors are free to take or leave the advice. The advice would remain voluntary in the shape of a standard, but would become mandatory for those firms and industry associations that chose to tie their voluntary codes to the standard's regime.

The Guide could be applied to any voluntary code, but particularly well to a code geared toward business-to-consumer practices. To transform the main content of the Guide into a standard that applied clearly to voluntary codes on business-to-consumer relations in e-commerce, there would need to be adjustments and additions, but the leap would not be great. Assuming that diverse stakeholders supported the concept, the Guide should require a reasonably small number of changes and additions to be adapted into a standard pertaining to voluntary codes on business-consumer relations. With a concentration on the electronic marketplace, that envisaged standard could adopt the main themes and approaches of the Guide, namely procedures for forming and implementing voluntary codes and fairly general outlines of what consumer protection subjects would be desirable to cover in a code.

The planners of a voluntary codes standard for e-commerce could decide to go further. The standard could, in addition, provide detail on good consumer protection practices that must be described in an e-commerce voluntary code. This added facet was part of the writer's initial concept of an e-commerce standard on voluntary codes. Some members of the multi-stakeholder advisory group for the feasibility studies expressed reservations about the option of including more detailed "best practices" advice in an e-commerce standard. Individual expert advisors stated a preference for a more limited feasibility study looking at the notion of a standard that focuses on procedures for designing and implementing codes. Those advisors indicated a desire to steer away from asking whether it was feasible to develop a standard that also spells out minimal or optimal criteria for the consumer protection content of voluntary codes aimed at e-commerce.

*Procedural guidance* that a standard on voluntary codes could offer includes advice on development of a code, on compliance assurance, use/abuse of online web seals and perhaps on periodic review of the code. In addition, the standard could offer a list of suggested consumer-focused topics or principles (e.g., privacy, advertising, contract formation, complaints) that a voluntary code might cover.

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A *procedural plus best practices* standard would go further, adding detail to the list of suggested code topics or principles, by noting a few key or illustrative best practices related to each topic heading (while not attempting a full recitation of best practices).

In the opinion of the writer, both the former "procedural" or the latter "procedural plus best practices" standard are feasible for Canada. Either option would be worth pursuing in the interests of Canadian consumers and companies that wish to participate in the electronic marketplace, or feel that they are compelled to do so by market forces.

## 2. VOLUNTARY CODES AND STANDARDS OUTLINING BEST PRACTICES FOR CONSUMER RELATIONS IN E-COMMERCE - CURRENT INITIATIVES

### 2.1 Canada

The Voluntary Codes Guide was discussed immediately above in section 1. Another highly relevant instrument is the agreement titled *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework*<sup>1</sup> (the Framework).

After more than a year of effort (preceded by much related study) Canada's Working Group on Electronic Commerce and Consumers finalized the Framework in August 1999. The Working Group that prepared the Framework was composed of representatives of most of the key players that would be involved in producing any standard covering the same territory - consumers' groups, business associations and governments. The Framework's Principles are headed: Information Provision, Contract Formation, Privacy, Redress, Liability, Unsolicited Commercial E-mail and Consumer Awareness. The Principles cover more than these short titles reveal. For instance, the coverage of "Information Provision" extends to, among other subjects, information provided by merchants about the merchant's identity and information on its security measures for data and communications, as well as information on how contracts are formed and on the products and services being sold.

The Framework principles could provide a good, though insufficient, foundation for a "best practices" (rather than "procedural") standard along similar lines. Since the Framework was not designed as a draft standard, it lacks some essential components of a standard. Nonetheless, since it is a national consensus document, it could be the basis for a contractual arrangement with an online trustmark, a potentially worthwhile interim measure to put into place while a standard is being negotiated.

To be the basis for a standard on voluntary codes, an instrument derived from the Framework would require, *inter alia*, sections dealing with recommended procedures for setting up codes, for reviewing them periodically and for auditing compliance. Also needed would be provisions on the awarding and removing of an online trustmark linking the standards regime to compliance with the voluntary code. A voluntary code is more likely to be effective if it is complemented by a program of compliance assurance,

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<sup>1</sup> The Framework, released November 1999, is available through Industry Canada at <http://strategis.ic.gc.ca/oca/>.

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consumer education and periodic review. In e-commerce, a voluntary arrangement is unlikely to have much effect on consumer confidence without these strengths and without a web seal that consumers believe they can trust.

As was observed earlier, the Voluntary Codes Guide could also be the basis for a standard on voluntary codes in e-commerce. A possible option for formulating the main body of a "procedural" e-commerce standard on voluntary codes would be to incorporate into a Guide-based standard the summary versions of the Canadian Framework Principles. The Principles are a compromise instrument generated by major stakeholders. The Principles are said to be in harmony with the existing voluntary codes of key industry sectors and in keeping with Canada's international commitments:

They reflect existing good business practices on the part of reputable Canadian on-line merchants, and they provide strong guidance to all businesses that wish to establish an effective Internet presence.

The principles are already reflected in codes of practice for on-line shopping created by the Canadian Marketing Association and the Canadian Association of Internet Providers. In their treatment of the privacy issue, the principles are in accord with the government's Privacy Bill, which is currently before Parliament. The principles are also in line with draft international consumer protection guidelines for electronic commerce, which Canada helped develop, and which are currently being considered for adoption by the Organization for Economic Co-operation and Development.<sup>2</sup>

As was observed earlier, the writer thinks that the ground has been laid for Canada to develop a voluntary codes that involves only "procedural" facets or that combines "procedural" and "best practices" components. Some experts would hold that Canada should pursue the more limited objective of a procedural standard, allowing companies and industry associations much wider flexibility as to which consumer relations practices would be required in a voluntary code for e-commerce. The writer notes that Australia, in contrast, has embarked on a course which appears headed toward a mixed, enriched standard (see below).

### **2.2 Countries Other Than Canada**

In October 1999, the Consumer Affairs Division of Australia's Department of the Treasury published draft guidelines (an "Exposure Draft") called "Building Consumer Confidence in Electronic Commerce: A Best Practice Model for Business".<sup>3</sup> The draft provisions describe minimum requirements related to e-commerce transactions. Public consultation on the Exposure Draft has been occurring through written submissions and public workshops.

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<sup>2</sup> Speaking Notes for the Honourable John Manley, Minister of Industry at the Launch of the Principles for Consumer Protection in Electronic Commerce, Toronto, Ontario, November 9, 1999.

<sup>3</sup> Available at: <http://www.treasury.gov.au/ecommerce>

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The introductory paragraphs to the Exposure Draft indicate that the goal of the exercise is to promote trust and growth in electronic commerce. The Exposure Draft foresees that a standard "will ensure that consumers are adequately protected and have confidence in making online transactions". The long term intention is that, after completion, "the Best Practice Model will be adapted by Standards Australia to form an Australian Standard". Indications are that Standards Australia contemplates promoting the Best Practice Model (BPM) as a voluntary standard through the International Standards Organisation.

A stated purpose of the BPM is similar to one achieved more generally by Canada's Voluntary Codes Guide, "to provide guidance to industry and consumers on the elements of an effective self-regulatory framework". In the Australian instance, however, the objective is a standard, and the focus is directly on practices involved in business-to-consumer electronic commerce. An explanatory statement in a sidebar within the Exposure Draft says: "The Best Practice Model ... recognises that the unique characteristics of electronic commerce require businesses to adopt different practices when dealing with consumers which may not be necessary in business to business transactions or in the offline environment".

The BPM is being developed for traders based in Australia that deal with both Australian and overseas consumers. It proposes to give guidance to businesses on:

- fair business practices
- advertising and marketing
- disclosure of the identity and location of businesses
- disclosure of the terms and conditions of contracts
- the implementation of mechanisms for concluding contracts
- the establishment of fair and effective procedures for handling complaints and resolving disputes
- the adoption of privacy principles
- the use and disclosure of information about payment, security and authentication
- mechanisms the processes necessary to administer a code based on the standard (the Best Practice Model).

Another organization that has been working on a comprehensive standard for appropriate practices in consumer transactions is the United Kingdom Office of Fair Trading (OFT). The OFT has produced a document exploring the idea of a "core standard" on consumer trading practices. These proposals have been discussed, with varied reviews, in multi-stakeholder fora in Britain.<sup>4</sup> The OFT effort proposed to cover fewer matters than do either the Canadian Framework or the Australian Best Practices Model. It appears that the envisioned core standard would initially capture good practices for advertising and information, contract formation, complaints and disputes. The OFT was also proposing

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<sup>4</sup> Office of Fair Trading, "Raising Standards of Consumer Care: Progressing Beyond Codes of Practice", as outlined and discussed in Section 3 and Appendices A and B of the publication titled *Raising Standards of Consumer Care - Report on a conference held at New Hall College, Cambridge, 22 September 1998*. (OFT, February 1999)

creation of a digital hallmark to identify those Internet traders that abide by codes guaranteeing security of payment and privacy of information to customers.<sup>5</sup>

Britain already has at least one operating standard that deals explicitly with important elements of e-commerce. BS 7799 on Information Security management is a very detailed document addressing security of information systems and of written information and the physical security of the buildings and computers where information is stored.

Under its Which? Web Trader Scheme, the Consumers Association (CA) of the UK is already operating a code of practice for online traders.<sup>6</sup> UK companies that agree to adhere to the code may (and must) display the Web Trader logo at their websites. When a UK company applies to display the mark, CA checks on the genuineness of the contact information and other data given to CA by the company. After the firm is accepted, CA does random checks and also invites and responds to any consumer complaints, to ensure that the company keeps to the code:

If we receive reports that they are not keeping to our code, we will investigate and, if this is the case, we will ask the trader to put things right or remove them from the scheme. If a complaint comes from a Which? Online subscriber we will provide all necessary legal backup, if it is needed, using lawyers from the Which? Legal Service. If you are not a Which? Online subscriber, you can still get help from Which? Legal Service...

When they apply to join the Web Trader scheme, participating traders are required to reveal whether the trade association they may belong to has an ombudsman. (See part 2.1 in the feasibility study on Dispute Resolution.)

With regard to the potential feasibility of international standards on e-commerce, we observe that CA has "international partners" outside the UK, that manage similar, affiliated schemes in their countries. A note in *Consumer Voice* (available from the European Commission in the opening weeks of 2000) informs that Consumer organizations in the Netherlands, Belgium, Spain, France, Italy and Portugal are pursuing initiatives similar to the Which? Web Trader.

### 2.3 International Organizations

The OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce* cover such areas as collection of personal information, consumer redress for problems and jurisdictional matters.<sup>7</sup> dispute resolution and redress; privacy protection; and consumer and business

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<sup>5</sup> See the White Paper, "Modern Markets: Confident Consumers", at: <http://www.dti.gov.uk/consumer/whitepaper/>.

<sup>6</sup> The Which? Online website is <http://www.which.net/>.

<sup>7</sup> The Guidelines for Consumer Protection in the Context of Electronic Commerce, approved on 9 December 1999 by the OECD's Council, aim to encourage: "fair business, advertising and marketing practices; clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction; a transparent process for the confirmation of transactions; secure payment mechanisms; fair, timely and affordable

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education". The quotation is from an OECD statement found online at <http://www.oecd.fr/>. According to a 1998 Consumers International statement, the OECD was "the only governmental transnational body that has taken on the task of developing a set of self-regulatory consumer protection guidelines that could provide a framework for global cross-border electronic commerce".

The OECD principles (then in draft) were informally endorsed by the Australian Direct Marketing Association (ADMA) in August 1999.<sup>8</sup> The ADMA's chief officer said that The Direct Marketing Association, described as "a worldwide industry association", had recently agreed to adopt e-commerce standards based on the OECD draft. The ADMA cautioned against "entrenching technical or management standards that might ultimately be in conflict with standards the OECD adopts, thereby risking the international competitiveness of Australian organisations".

According to Consumers International, however, business opposition was a main stumbling block to passage of the Guidelines. As the Overview document records, CI alleged in 1998 that industry was lobbying hard to weaken the Guidelines - by turning the detailed, practical content into a set of vague general principles. CI opposed such a move, and called for more substantial guidelines. A review of the Guidelines, agreed to in December 1999, may lead one to conclude that CI did not achieve its objective. The OECD Guidelines will not necessarily lead to national voluntary codes, standards or laws. The OECD is not geared toward taking guidelines further by generating laws, standards or firm mechanisms for monitoring compliance.

### **2.4 Some Voluntary Code Options Offered by Business**

A proposal for leaving control of voluntary e-commerce practices in the hands of industry is "A Global Action Plan for Electronic Commerce Prepared by Business with recommendations for Governments".<sup>9</sup> Consumer spokespersons have let it be known that industry self-regulation would not receive general support. Aside from that issue, the Global Action Plan as it stands could not be the foundation for a consumer-related standard (assuming that relevant stakeholders want one). It does not deal with good practices for the formulation of voluntary codes. It does contain many principles relevant to dealings among businesses or between businesses and governments. Though issues of known concern to consumers are included in the Plan, these are not addressed in specific ways that would give comfort to consumers who are reluctant to shop online. A sampling of the topics covered by the Global Action Plan follows. The Plan often covers these in quite general terms:

Protection of personal information

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<sup>8</sup> Judith Heywood, "Marketers Call For International E-commerce Rules" in *The Age*, 08/10/1999, page 5.

<sup>9</sup> Second edition, issued to the media from an industry conference held in Paris, October 1999. Available on the website of the International Chamber of Commerce: <http://www.iccwbo.org/>.

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- Privacy and transborder flows of data
- Marketing and advertising ethics
- Issues relating to confidentiality and lawful access to information
- Promotion of technology development to ensure security
- Searches and subpoenas of computer records
- Access to public domain information
- Legal government interception of telecommunications
- Business monitoring of its own communications
- Legal validity of electronic signatures
- Removing legal/regulatory obstacles
- Create a new uniform legal framework
- Jurisdiction and applicable law
- Dispute settlement
- Fraud and other commercial crime

The market for an e-commerce best practices standard is demonstrated by commercial ventures in the United States aimed at meeting the perceived demand for one. An example is the draft document called the "The Standard for Internet Commerce". (It defines "standards" in a generic dictionary sense).<sup>10</sup> The promoters suggest that the comprehensive "Standard" will help merchants and customers deal with confusion caused by a proliferation of guidelines and symbols relating to specific aspects of e-commerce. The website message observes that "it is increasingly difficult for customers or merchants to understand what they should do or look for, thereby resulting in the failure of any guideline to make the desired impact". Drafting of the "Standard" is primarily being done by representatives of Internet-oriented businesses, including Web malls. Consumer and government representatives do not have a vote in the drafting of the intended Standard, although anyone is invited to make contact online with opinions. The website information reveals that the Standard will be entirely voluntary, perhaps with an online seal, but with no anticipated sanctions for non-compliance.

BBBOnline has introduced several online verification programs to respond to opportunities created by e-commerce.<sup>11</sup> Each program comes with its own set of guidelines and an online seal for registered companies. The BBBOnline reliability seal is an extension of traditional Better Business Bureau services. A participating business must join the local BBB chapter. The presence of BBB in so many urban centres of North America allows BBB to send a representative to visit a merchant's physical site to verify information. Another positive feature of the BBB system is that participating merchants agree to submit to third party resolution of disputes.

Adding to its initiatives on the "reliability" of registered businesses, on privacy policies of firms and advertising and on marketing to children, BBBOnline has announced a program

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<sup>10</sup> A description of the initiative, begun under the wing of the US publisher Ziff-Davis, may be viewed, along with an evolving draft, at <http://www.gii.com/standard/> or at <http://www.commercestandard.com>.

<sup>11</sup> <http://www.bbbonline.org>

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that will label participating firms as complying with a wider set of e-commerce guidelines. The projected launch time was early in the year 2000. No role was announced for regulatory or consumer representatives in the drafting of the new guidelines. The absence of a clear role for consumer and government representatives is of course a major contrast between web seal programs run by the private sector and the way that service or management standards on e-commerce would be developed.

The WebTrust reliability seal program was established by Chartered Accountants in Canada and their U.S. counterparts. The WebTrust Principles cover disclosure of business practices, protection of information and security of transactions. As with the BBB system, merchant site audits are performed. WebTrust audits are much more substantial (and repeated) however. As with BBB, participating merchants are able to use an online trustmark that can be clicked to obtain relevant information.

The Truste program focuses on privacy. Truste does not try to measure the strength of a privacy policy, but looks at whether a merchant has adopted one, follows it and gives notice about it to consumers. Truste also looks at some aspects of data security. Again, there is a clickable icon.

## 2. **WHAT IS THE APPROPRIATE PROCESS FOR COORDINATING DEVELOPMENT OF AN E-COMMERCE STANDARD ON VOLUNTARY CODES?**

If a standard were developed in Canada, the most likely coordinator would be CSA International (CSA), formerly the Canadian Standards Association. Australia has already selected Standards Australia to undertake responsibilities if/when a standard is developed in that country. The successful development of the 1996 CSA Privacy Standard is a precedent for developing e-commerce related standards in Canada.<sup>12</sup> The Privacy Standard underwent the kind of developmental steps likely to be followed for creating an electronic commerce standard on voluntary codes. It involved multi-party consultation throughout the drafting process. The content of the Privacy Standard is directly applicable to one of the most sensitive subjects for consumers who resist the lure of Internet shopping. Ten central tenets from the CSA Privacy Standard form the Privacy Principle (#3) in the *Principles of Consumer Protection for Electronic Commerce*.

Possible benefits and caveats of arranging for CSA International to be involved in developing an e-commerce standard were discussed in parts 2.3-2.5 and 6.3-6.5 of the Overview document. An upside of CSA International's accumulated goodwill is the fact that Canadian consumers already know and trust the CSA label, unlike, for example, the logos of unknown quantities (for consumers) such as the International Standards Organization and the OECD.

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<sup>12</sup> The *Model Code for the Protection of Personal Information* (CAN/CSA-Q830-96) can be obtained through the CSA International website, <http://www.csa-international.org/>.

The background to the CSA Privacy Standard illustrates the CSA's potential value as a focal point for developing e-commerce consumer practice standards.<sup>13</sup> One reason that the CSA was approached to develop a voluntary standard on privacy was that the various stakeholders thought of the CSA as a neutral forum. The success of the cooperative drafting venture under CSA's umbrella is indicated by the fact that the Canadian government used the 1996 CSA Standard as the basis for proposed federal privacy legislation. CSA International's affiliate, the Quality Management Institute, was selected to administer the CSA Privacy Code, and experience gained in that role could be fed into the design of a CSA Standard on voluntary codes for business-consumer relations in e-commerce. (Only one firm had registered with QMI by December 1999. The lack of response was attributed partly to the fact that legislation which largely lifts the language of the CSA Standard was pending from the federal government.)

National standards developers focused on e-commerce would no doubt try to stay in step with the OECD Guidelines. The latter are sufficiently imprecise that there appears to be much leeway, however. Continued interplay among national SDOs, the OECD and the stakeholder representatives within these fora should add to the feasibility of standards that pertain to e-commerce voluntary codes.

The electronic marketplace still lacks the comfort and satisfaction level for consumers or the success record for businesses that would support strong growth.<sup>14</sup> A respected standard guiding a wide range of voluntary codes could contribute to an enhancement of the climate for cautious consumers.

One factor in forecasting that a voluntary codes standard would be feasible is the perception that Canadian businesses, legislators and consumer representatives would want Canada to take action to develop a voluntary codes standard for e-commerce. There is no citizens' coalition demanding a standard, but those involved more closely with the subject area may see good business reasons to support the concept of developing a standard here.

Consumers might benefit equally from a protective standard that was initially designed in Australia, the UK or elsewhere and then adapted for use in Canada. It could be in the interests of the commercial community, however, to launch a Canadian standard first. A successful standard may assist Canadian online firms to earn the confidence of consumers and attain a more competitive online presence. A low percentage of Canadians who shop online currently conduct their transactions through the websites of Canadian companies.<sup>15</sup>

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<sup>13</sup> As is explained in the Overview document, even if a standard were developed through CSA International, it would not have exclusive rights to market it or to monitor compliance.

<sup>14</sup> 56 For example, in a September 1999 survey, four out of five Canadians said they would not be willing to give their credit card number over the Internet: Speaking Notes for the Honourable John Manley, Minister of Industry, at the Launch of the Principles for Consumer Protection in Electronic Commerce, Toronto, November 9, 1999, page 2

<sup>15</sup> According to evidence released in a Deloitte & Touche/Angus Reid poll reported in media sources in May 1999.

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The uneven reliability and accountability of online merchants and sites and the unease of consumers are not the only factors at play behind the statistical evidence. On the other hand, a voluntary codes standard for e-commerce that helps business to respond to these factors could foster improvement in the online competitiveness of Canadian merchants.

## **2. THE NEED FOR AND FEASIBILITY OF A STANDARD ON VOLUNTARY CODES PERTAINING TO BUSINESS-CONSUMER RELATIONS IN E-COMMERCE**

The discussion in section 2 above mentioned at least four documents that could act as a starting point for a standard on voluntary codes. These are the OECD Guidelines, Canada's Voluntary Codes Guide, the Canadian Framework Principles and the Australian Best Practice Model (BPM). The OECD instrument is vague and may be best relegated to the role of a backdrop to be consulted from time to time. The Guide is a well established and practical basis for a benchmark standard focused principally on procedures related to voluntary codes.

The Canadian Framework Principles would be a central source for "best practices" elements in an e-commerce standard, should that be a direction desired by Canadian stakeholders. It is noteworthy that the Framework was agreed to after a long but inclusive multi-stakeholder procedure. The voluntary codes of major industry partners are said to be already in compliance.

As was reported earlier, the Australian Best Practice Model contains both pertinent guidance on implementation provisions respecting voluntary codes, and, as the name suggests, advice on best consumer relations practices. Moreover, though the BPM is in a public consultation phase, the outcome of the process is intended to be a Standards Australia standard.

Certain provisions of the Australian BPM instrument are relevant specifically to implementation of a standard. They are naturally lacking from the Canadian Framework, which is a group of Principles and not a draft standard. The draft BPM contains provisions on code administration and review similar to what would be needed in an imagined e-commerce standard (though in the writer's view the draft provisions are incomplete):

### Code Administration

1. Any industry organisation adopting the Best Practice Model should set up a body to administer the Model including an independent chair and equal numbers of industry and consumer / community representatives; which would:
2. monitor and report on compliance with the code;
3. obtain adequate resources for the administration of the code from members of the organisation as well as the preparation of budgets and financial reports;
4. publicise the code to members and consumers;
5. implement a system of sanctions for breaches of the code;
6. arrange periodic independent review of the effectiveness of the code and the operations of its administering body and publicly report on the findings of the review; and
7. prepare publicly available annual reports on the operation of the code.

### Review of the Best Practice Model

This Best Practice Model will be formally reviewed after one year of operation and then every three years after that time. In addition, the code may be modified between reviews as circumstances require. Businesses and industry organisations who adopt the Best Practice Model should develop procedures to incorporate modifications to the Best Practice Model within their own industry code promptly.<sup>16</sup>

Though the BPM is relatively comprehensive as a "procedural plus best practices" model for a standard, there are parts of the Canadian Framework, the Voluntary Codes Guide and other instruments that the writer might recommend. It seems feasible to use any of the three precedents (the BPM, the Framework or the Guide) as the basis for a standard, depending on how extensive a standard Canadian stakeholders may decide to pursue. Canada has not yet decided to produce a standard. Nor has Canada discussed how extensive a standard should be, in the event of such a decision, much less which entity might coordinate negotiation of one.

If a comprehensive standard is considered feasible in Australia, without the interim stage represented by Canada's Framework Principles, it is logical to assert that a standard on voluntary codes for e-commerce is feasible in Canada.

The Australian Exposure Draft is not the only draft standard now being circulated that encompasses a wide range of issues central to consumer concerns in the electronic marketplace. In a recent development, the Bureau de normalisation du Québec (BNQ) and the Office de la protection du consommateur (OPC) have combined forces to produce a comprehensive set of draft norms intended to form the foundation for a standard.<sup>17</sup> Once again, an SDO has chosen to work toward a vehicle bringing together many e-commerce components, rather than working on separate standards for complaints handling and so on. Pivotal areas such as dispute resolution are covered within the overall framework, along with provisions on verifying information about the merchant, privacy protection, disclosure of information, contract formation, returns and cancellations. At a February 2000 conference on e-commerce,<sup>18</sup> representatives of the OPC and BNQ explained their objective of developing a standard derived from the Ten Principles. The BNQ and OPC have amassed a good set of draft provisions, but they are at an early stage of standards development (though the two cooperating organizations hope to realize a standard within a

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<sup>16</sup> The *Principles of Consumer Protection for Electronic Commerce: A Canadian Framework* does allow for review as well. The Preamble states that the Working Group "has agreed to review the principles regularly to ensure their continued relevance in the rapidly changing electronic marketplace".

<sup>17</sup> At the December 1999 Workshop on Consumers, Electronic Commerce and Standards, BNQ and OPT representatives distributed a document titled "OPC Electronic Commerce Practices", subtitled "Ten Principles for Electronic Commerce that Respects the Interests of Consumers".

<sup>18</sup> "Electronic Commerce and Consumers-The Next Steps-Implementing the Principles for Consumer Protection", held in Toronto on February 10, 2000.

year.) The Québec initiative will no doubt prove to be a significant contribution toward producing a consumer-related standard on electronic commerce in Canada.

The Working Group who developed the Canadian Framework Principles, as well as other players active in standards development, have indicated a belief that further steps are needed soon to provide a measure of protection and assurance to consumers vis-à-vis e-commerce. That was apparent at the meeting of February 2000. Even if all major stakeholders decided to work jointly on a standard, it can sometimes take years to produce a consensus instrument. The Canadian Framework Principles took approximately eighteen months to arrive at from the initial discussions in 1998 to publication of the Framework in November 1999 and this process occurred without obligations associated with development of a standard, such as opportunity for notice and comment on drafts. The consensus Framework Principles are not tied to a compliance regime or to an online trustmark, but the Working Group is considering a number of proposals to build on the Framework Principles. These options could be pursued individually or in tandem. The options include (in the longer term) a standard and (as soon as possible) a “seal of seals” or what this observer refers to as a “benchmark seal” for web assurance seals.

The writer’s instinct during initial research on online marketing in the latter 1990s was that many cautious consumers would want a range of assurances before stepping into an Internet mall with both virtual feet. Being assured about just privacy, or complaints handling or the availability of refunds might not be enough. The recent experience of drafting the feasibility studies and of observing reactions to them has confirmed the view that the preferred path for business-to-consumer standards in e-commerce is to pursue a comprehensive package, rather than to focus on individual areas such as complaints handling.<sup>19</sup> It is notable that at the December 1999 Workshop on Consumers, Electronic Commerce and Standards, the overwhelming weight of preference stated was in favour of a comprehensive standard. No one argued for separate e-commerce standards on distinct business-to-consumer issues, though a couple of speakers contended that standards may not be needed at all.

A number of reasons to support this position have been presented in the present study. Several precedents that take the combined approach have arrived on the scene in Canada, Australia and Britain. There are also some quite practical reasons to follow a course that leads potentially to fewer standards and fewer trustmarks.

We must recognize that though consumer organizations and businesses of various sizes may be well represented in NSS processes, there are only so many consumer volunteers and staff members to go around. There are many committees and consultative groups in which to participate. A dearth of resources to participate in standards development is an obstacle already facing consumer organizations and individual consumer representatives.

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<sup>19</sup> Industry Canada’s choice to explore the feasibility of three possible standards in mid-1999 was associated with standards discussions being held internationally at the time. It was not indicative of any preliminary assessment of the merits of the different potential standards.

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The number of e-commerce standards (and related) initiatives that Canada can sustain at once is a subject for speculation, but it is clearly easier to foster one or two, rather than several.

Most consumers do not want to face a bewildering array of icons on their screens when they visit a marketer's website. It would be problematic to come up with a series of new distinct standards on different aspects of e-commerce, each allied to its own trustmark. If a consumer could view one trustworthy web seal linked to a package of assurances in one standard, that would represent a true advance for consumers and for online merchants.