

**Speech by Ambassador Karen Kornbluh**

**U.S. Permanent Representative to the Organization for Economic  
Cooperation and Development**

**Conference on Empowering E-Consumers: Strengthening Consumer  
Protection in the Internet Economy, Washington, DC – 8-10 December 2009**

Thank you, Mr. Chairman, for your kind introduction and for hosting this very timely conference that will allow us to assess how far we've come on e-commerce and what future challenges we will need to address. American consumers are very lucky to have you as their Federal Trade Commission Chairman. Over the years, I have seen firsthand your vigilance on behalf of consumers, whether protecting them from restraints on trade, from scams, or from threats to privacy and the security of their personal data. I want to thank the FTC staff, particularly Stacy Feuer, for their work on this conference, and of course the OECD's Science, Technology and Industry Directorate including Andy Wyckoff, Peter Avery and Briitte Acoco. I am thrilled to be here not only as the new US permanent representative to the OECD but also to probe ways that the OECD can help unleash further the power of the Internet for consumers.

Tomorrow is the 10th anniversary of the OECD's Guidelines on Consumer Protection in the Context of Electronic Commerce. While some of you might think of anniversaries as an occasion to celebrate with dinner and flowers, I've already

learned that in the OECD world, anniversaries mean something else -- a conference!

Chairman Leibowitz said this conference should also be a celebration. It should be a celebration of the power of the Internet to create opportunities for consumers and of the 1999 OECD e-commerce Guidelines, which provided a basic framework for governments and stakeholders that has been influential in many OECD and non-OECD countries in setting rules of the road that benefit both consumers and business. The Internet is all about access to information – and information puts tremendous power at the hand of the consumer.

To illustrate what I mean, let me tell you a story. When I was a graduate student, I was given the opportunity to visit Berlin. We were taken to East Berlin where we saw food lines and tiny apartments shared by large extended families. We also went to a student canteen where we had beers with East German students. I remember one man with glasses who told me, “This won’t last. We can watch TV from the West now. We can see what you have. Young people won’t put up with this anymore.” That was 1988.

I have no doubt that information made the Wall porous and helped bring it down.

Since that time, information has been able to spread in ways we couldn't have imagined back then – thanks to the Internet. I worked at the Federal Communications Commission when the government made a number of key decisions that helped speed deployment broadband communications networks, and supported programs that allowed schools and libraries to purchase the tools of the Internet at deep discounts, bringing kids even in the poorest schools access to information worlds away.

The deployment of the new technology put information in the hands of individuals -- making them more active citizens, employees, small business owners, and yes, consumers. E-Commerce has empowered consumers by opening up markets and creating new competition, choice and convenience for consumers.

Today, e-commerce allows consumers to buy directly from producers and from new secondary markets in a much more efficient manner at lower prices; to get information about products or compare prices; to buy when they want where they want (a wonderful thing for a working mother!); to find niche products, including lower cost used products like the used ping pong table I bought on Craig's List and that now adorns the US OECD residence; it also allows mass customization (e.g., Dell's built to order computers), targeted promotions and information for consumers and direct consumer input into prices (e.g., Priceline.); and increasingly

to purchase information without the packaging – like e-books or streaming media; to locate products more easily; and even customize them on-line.

The OECD Guidelines have helped spur the development of an e-commerce culture. They have encouraged legitimate and reputable companies to develop an online environment.

Many of the high level principles in the 1999 Guidelines - transparency, cautions against practices that create "unreasonable" risks of harm to consumers – have allowed e-commerce to expand by balancing protections with freedom of commerce. The call for "a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework for electronic commerce" has been a critical element in creating the certainty needed by both sellers and buyers.

This conference is a celebration but also a call to action – to figure out what we can do so that e-commerce benefits consumers even more. What obstacles remain to the use of e-commerce? And what new developments pose challenges that were not addressed in the initial guidelines? We have moved from dial up to broad band, and now to mobile; from simple click and ship to sophisticated portals that allow consumers to compare multiple retailers at once; from B2C to C2C; from

web advertising that targeted mass audiences to sophisticated tailored advertisement and product placement.

Over the next few days, I hope you will make it your mission to ask the questions and spark the subsequent conversations that will help guide the review of the OECD guidelines. In spring 2010 the OECD will publish its report and thereafter begin making decisions about which issues to focus on for any changes to the guidelines.

To get the conversation going, I'll quickly pose a few questions for your consideration

1. What can be done to address consumer concerns about fraud?

For all the rapid increase in the numbers, Electronic Commerce is still a fraction of all retail sales in the OECD. In 2008, per the U.S. Census Bureau, U.S. B2B e-sales amounted to 27% and B2C e-sales to only 5% of the retail total. In other countries there seems to be a somewhat greater acceptance and e-commerce rates are higher. The global picture is mixed - some countries have higher e-commerce rates while others are lower.

The first thing a government can do to protect e-consumers is protect them from fraud. I know this is a big priority for the FTC. Consumers still have concerns about identity theft, bait and switch tactics by traditional retailers and emerging consumer retailers. They're not wrong. Many consumer protection authorities in OECD countries deal with this everyday.

We need to focus on whether there is more that government and the private sector, working with civil society, can do on fraud – such as complaint lines, more active enforcement, more robust monitoring but of course government must take care not to erect counterproductive barriers to commerce.

2. How can governments facilitate cross-border trade?

While e-commerce has grown exponentially since the issuance of the Guidelines, cross border trade has much unfulfilled potential. In theory, it could allow consumers to take advantage of cheaper prices in other countries if shipping costs and tariff barriers are not excessive. It could also allow countries, such as the US at the moment, that offer lower prices for many products, to increase exports. Yet, even with the EU “single market” cross-border e-commerce only amounts to 7% of all e-trade. Language is one barrier – but there are also technical and legal barriers that limit consumer choice. What can be done to increase trust to facilitate greater trading across borders?

### 3. How to encourage Digital Content trade?

The distribution of digital content online offers consumers the opportunity to obtain content flexibly and immediately, when and where they want it, and in an environmentally friendly way that avoids consuming plastic packaging.

However, digital content is sometimes very difficult to obtain across borders on law-abiding Internet platforms. In its 2008 Policy Guidance for Digital Content, the OECD recommended governments put in place policies to promote accessibility to digital content regardless of location.

### 4. Opportunities growing from the participative Web – or Web 2.0

The Internet is a uniquely participatory medium and it now empowers users to develop, rate, comment on and distribute digital content, for example. There are however concerns about the transparency of the identity of web participants – and so the FTC, for example, has issued updated guidelines on endorsements and testimonials. Further, the rise of virtual worlds and social networking sites creates new complexities for consumer protection laws

### 5. Move to mobile consuming

In 1999 when the OECD guidelines were adopted, mobile communication was voice-only. . As technology has brought us Blackberries, iPhones and 3G

networks, businesses and advertisers have responded by developing new techniques to send personalized or location-based advertisements. Companies are also using banners, and “free” offers of ringtones, video and/or TV content, if consumers will agree to first watch advertisements. Mobile banking solutions are growing around the world.

In 2008, the OECD explored whether the 1999 guidelines were adequate to address emerging m-commerce issues – in some areas the answer is yes. The OECD however identified several challenges where greater augmenting the guidelines might be appropriate – such as how the small size of mobile screens may impair consumers’ ability to access full product information; understand key contract terms or disclosures regarding the use of personal information, as well as the need to protect children who use mobile phones.

## 6. Privacy

Differences in privacy regulations can become a barrier to cross-border e-commerce – just ask Google leaders facing prosecution in Italy for practices that are lawful in the US.

One area of intense regulatory interest at the moment is behavioral advertising.

According to research conducted by the OECD, online advertising represents 10%

of the advertising industry, and its growth since 2003 continues to exceed other forms of advertising.

It clearly plays a significant role in subsidizing the availability of the unprecedented amount of free services and lawful, free content found on the Internet. Advertisers are employing technology to focus and customize their messages and target consumers in ways not used before. This more sophisticated form of advertising allows consumers to receive information about products they are more likely to want – so that they are not compelled to click away or wade through ads that may not interest them. However, consumers often do not understand what data is being compiled into profiles of their web activities and with whom it may be shared.

More broadly, this new world of information travelling across borders millions or billions of times a day, information subsidizing huge reservoirs of free content, and Web 2.0 speakers voluntarily posting significant amounts of personal information may raise challenges for and questions about efficacy of existing data protections. I look forward to a meaningful discussion about how to provide consumers with the power to exercise meaningful choices regarding their personal information.

## 7. Protection of Children

The 1999 Guidelines called for "special care" in advertising and marketing to children on the Internet. Since then, children's exposure to technology has mushroomed. Mobile commerce, for example, creates particular challenges for parents and retailers because it is very difficult to know the subscribers' age. In traditional internet shopping, credit cards are required to complete transactions and many retailers have tick boxes to confirm that the purchaser meets the age criteria for the item being purchased. These are limited but generally effective protections. However in mobile commerce, a credit card is often not required to complete transactions, so how can retailers know the age of their customers? There are some easy solutions -- credit limits on phone purchases established by parents or parental control features being installed on phone. But for some of the more difficult issues I hope you will discuss whether greater government intervention is needed to promote protective technologies.

I hope that as you discuss these issues in the days to come, you will not lose sight of the opportunity that e-commerce offers the consumer by opening up competition, choice, and convenience – and find new ways to expand those opportunities. I look forward to the discussions and to learning about the proposals that result from this conference. You've already made a terrific start in framing the issues and focusing the OECD on the critical importance of consumer protection and empowerment in the Internet economy.

Conference on Empowering E-Consumers – Kornbluh Speech

December 4, 2009

Drafted: A. Lewis, USOECD & S. Feuer, FTC

Cleared:

L. Tamlyn, USOECD ok

K. Kornbluh, USOECD ok

S. Feuer, FTC ok

M. Cavanaugh, EEB/PPD ok

K. Humphrey, EEB/PPD ok

State/Public Affairs