Good morning. I’m grateful to our three co-sponsors and the Government of the Netherlands for the opportunity to speak on this important subject.

Like virtually all of you, the U.S. Government is very interested in exploring the ways in which ADR can boost consumer confidence and promote the growth of online consumer transactions.

We have noted that the Internet can enable international consumer transactions at unprecedented levels. This is clearly a good thing.

The expansion of international consumer transactions may be hindered, however, by the very difficult choice of law and choice of forum problems that can arise when things go wrong with a transaction. ADR has the
potential to provide consumers with redress in such situations, and to help increase consumer confidence and the volume of consumer transactions.

I am glad to be participating in this important international dialogue about the future of ADR for online consumer transactions. It’s an excellent opportunity to compare developments in our respective domestic environments, and to see what more can be done to promote the growth of ADR in the cross-border context.

**DOC/FTC WORKSHOP**

My task today is to share with you some of the discussions from the workshop that the U.S. Department of Commerce and the Federal Trade Commission held on this topic in June. I will also provide some of my own observations and, I hope, help to inform our discussions over these few days.

At the June workshop, we were very pleased to bring together leading experts from all interested stakeholders -- consumer groups, industry, governments, multilateral organizations, academics and others -- for an open
discussion of how alternative dispute resolution programs can contribute to fostering consumer confidence without unnecessarily burdening business.

We examined existing and emerging ADR programs for online transactions, and considered how traditional offline ADR mechanisms are being -- and can be -- used to resolve disputes about online transactions. In addition, we began to look at the various factors that are important for developing fair and effective ADR systems, and to think about the possible roles for stakeholders in promoting the growth of these systems.

In the next few minutes, we’ll review some of the different approaches to ADR. At this point, one thing is clear – there is no “one-size-fits-all” solution to dispute resolution in the online environment. ADR providers are developing and implementing various forms of ADR. As we will see, businesses find that what might work for one type of business won’t work for another, and what works in the business to business context may fail in the business to consumer arena.
As my predecessor, Andy Pincus, said at the June conference, for ADR to succeed, it must provide “consumers with remedies that really do work for them -- that both provide protection and are practical for the consumer to use.” After considering these issues, we’ll examine what lessons we can draw from the workshop and discuss briefly where we might go from here.

REAL WORLD ADR PROGRAMS AND MECHANISMS

One of the best and most exciting aspects of the workshop was the opportunity to see the wide array of ADR programs and mechanisms that are already being developed and implemented in the marketplace. These mechanisms employ a range of technologies and approaches, and address a diverse array of disputes and transactions.

For example:

SquareTrade, whose online dispute resolution director will address us later, is an ADR provider that primarily uses online mediators to help the parties reach a settlement of a dispute. SquareTrade provides services for Ebay.com and other prominent e-commerce companies, and has successfully facilitated a resolution in thousands of disputes arising from consumer transactions.
Cybersettle, like ClickNSettle, from whose vice president we’ll hear from later, is an ADR provider that enables the parties themselves to reach binding settlements in insurance claims and other disputes involving monetary damages. Cybersettle uses a “double blind bidding system” in which each party provides dollar values (representing the price points at which they would settle the case). They submit these figures into a secure and confidential Internet site. The website technology compares the dollar values and -- pursuant to the agreement of the parties prior to using the system -- automatically settles the case if the figures are within a certain close range. In this way, Cybersettle leverages Internet technology to help the parties themselves reach a binding settlement – there is no third party mediator or decision-maker.

iCourthouse is an entirely different model that can be used to address any kind of dispute or transaction. iCourthouse uses online juries to issue decisions in almost any kind of dispute -- from consumer transactions to landlord-tenant cases to those involving money damage issues. These decisions can be binding or non-binding, depending on what the parties agree to ahead of time.
Chargeback mechanisms have been in use for many years as part of the credit card system in the United States, and are now being used to help resolve disputes from online transactions. Using a combination of private contractual arrangements and U.S. law under the Fair Credit Billing Act, these mechanisms provide a means of resolving some basic types of consumer disputes, and thereby establish an extra layer of protection for consumers in both the online and offline worlds.

DIFFERENT APPROACHES FOR DIFFERENT BUSINESS MODELS

We also saw in the workshop that different businesses may approach the issue of ADR in different ways. For example, a large company might use in-house ADR to resolve the great majority of customer problems. In contrast, smaller companies might have a greater need to obtain the assistance of a 3rd party ADR provider or seal programs.

In addition, firms with certain business models might have no need for ADR at all. For example, an online music business reported that it simply provides any unhappy consumer with another download for free. This may
be roughly equivalent to the developments we saw in the mail-order
catalogue business several years ago, where those companies realized that the
only way they would ever build consumer confidence is to offer money-back
guarantees and other offers that would ensure customer satisfaction.

DIFFERENT FORMS OF ADR

In terms of the form of the ADR, people had different views about whether
direct negotiation combined with mediation is the best means of resolving
disputes in the context of consumer transactions, or whether arbitration by a
third party is the best approach. Other approaches were also offered as being
superior for building consumer confidence, such as having the ADR start as
mediation and then move to arbitration if the parties were unable to reach
their own settlement.

In the context of arbitration by a third party, a very controversial issue was
whether – or under what circumstances – the arbiter’s decision should be
binding on one or more parties. We found little consensus on this point, even
among the experts within an individual group of stakeholders.
LESSONS AND OBSERVATIONS

What can we conclude from all of this? I think there are several lessons to be learned from the “real world” ADR mechanisms and programs and other issues we discussed at the June workshop.

Perhaps the most obvious is, as I alluded earlier, that the market is developing and implementing a wide variety of ADR programs and mechanisms to address a diverse array of online disputes and transactions. The best approach or mechanism for conducting ADR and building consumer confidence will likely vary depending on the value, complexity and other features of the dispute and the transaction.

In addition, we are beginning to see some general principles that are characteristic of fair and effective ADR mechanisms. While we believe it is still too early to define these principles in substantial detail – given the wide variety of existing and emerging approaches and systems – it is worthwhile to begin to identify and examine these broad principles in a general manner. In particular, fair and effective ADR mechanisms appear to have the following characteristics:
· the impartiality of decision-makers;
· the accessibility of the ADR mechanism or provider to the consumer;
· the need to ensure that the mechanisms are at low or no cost to the consumer relative to the amount in dispute;
· the importance of transparency -- that is, providing consumers with clear and conspicuous information about the systems and procedures sufficient to enable informed decision-making, before the consumer is asked to make a decision about the ADR; and
· the timeliness of the resolution and redress.

INTERNATIONAL ISSUES

A critical piece of our work over the next day and a half will be to examine the operation of ADR systems in the international environment. As I noted a few minutes ago, it seems that the choice of law and choice of forum problems are most acute in the international context. As such, ADR may be able to do the most good in promoting consumer confidence and the growth of online transactions.

Many different issues arise, however, when you look at the operation of ADR in the cross-border context. ADR programs must be able to accommodate
different languages and cultures, but also be able to operate across different
legal frameworks and different policy approaches that governments may
adopt on these issues.

For example, some governments are taking a more aggressive role in
attempting to establish and certify particular ADR programs as being fair or
effective. Others, such as the U.S. Government, are focusing on pushing the
private sector to take the lead in developing and implementing these systems.

Whoever is taking the lead, in order to promote consumer confidence on a
global basis, governments need to promote global and seamless ADR
systems and mechanisms.

We are taking steps to help facilitate this. Certainly the discussions we are
having here at the Hague will be an important contribution. In addition, we
are currently working with the European Union to reach a common
understanding on some of the general principles that are characteristic of fair
and effective ADR programs.
WHERE WE GO FROM HERE

So where do we go from here? I think there are several basic ideas that can guide our policymaking and thinking on these issues.

First, it is clear that the market is generating a broad range of ADR approaches to deal with a broad range of disputes. We should encourage this, and should not take any actions at the governmental level that might discourage the growth and development of new and innovative ADR mechanisms that are fair and effective.

Second, it is appropriate for the private sector to lead in developing new and innovative systems. After all, businesses have an interest in ensuring that ADR works to build consumer confidence and develop repeat business. Interestingly, at the June workshop, Charles Underhill, who will be speaking later today, discussed one U.S. study that found that “customers who complained and are subsequently satisfied are 8% more loyal” than those who never had a problem in the first place.
In any event, I think it is safe to say that businesses that do not engender consumer confidence will lose customers to those that do. At the same time, it is critical for all stakeholders -- including consumer groups, academics, and governments -- to also participate in the process in order to ensure that the systems are truly fair and effective and build consumer confidence.

Third, we need to continue to work together at the international level. The Internet is an inherently global medium, and the problems of applicable law and appropriate forum are most acute at the international level. ADR has the potential to do the most good at this level to promote consumer confidence and consumer transactions. We won’t get there, though, unless we ensure that the ADR mechanisms themselves operate well across different national and regional legal systems and cultures.

Thank you for the opportunity to address you this morning. I look forward to exploring these issues together.