

The Better Business Bureau BBBOnLine



## Self-Regulation of the Online Marketplace

Steven Cole  
COPOLCO—Prague Workshop  
May 17, 2004

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## The Better Business Bureau What Are We?

- Private sector, business membership, organization in US and Canada
  - founded in 1912
  - 178 offices
- 350,000 members--mostly "SMEs"
- Unique mission
  - "foster ethical relationship between business and the public"
- **53 million** instances of service in 2003
- We are a "click and mortar" business

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## Better Business Bureau Self-Regulation Tools and “Reach”

- 2 million **complaints** handled or referred
  - Almost 1 million processed for company response
  - Between 65-70% filed online
- 35 million **business and charity reports** distributed
  - 13 million online




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## Better Business Bureau Self-Regulation Tools and “Reach”

- Consumer and business education
  - 9 million education web page views
  - .5 million hard copy brochures
- Standards setting (more later)
- Brick and mortar and online “certification” (“trustmark”) programs
  - Membership identification
  - Online Reliability (more later)
  - Online Privacy

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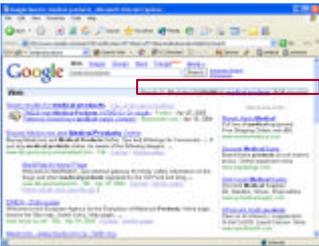
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## Self-Regulation of the Online Marketplace

Consumers and business have consistent needs 

- High and consistent standards
- Accessible remedies
- Flexibility
- Sorting out the information overload
- Incentives for business
- Affordable (or free!)



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## The Trustmark Approach

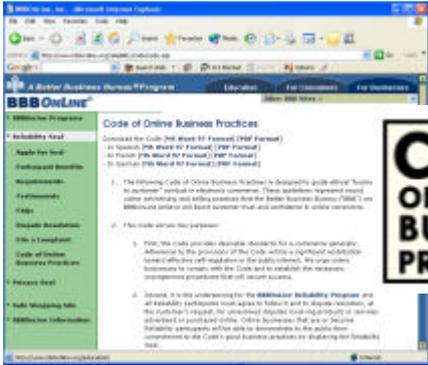
- **Pioneering concept when BBBOnLine launched in 1996**
  - 17,000 participants in North America
  - Replicated and studied elsewhere
  - Future uncertain outside US (more later)

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## Three Legged Stool

- **Leg 1: Code of Online Business Practices**
  - High “best practices” standards;




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## BBBOnLine Code of Online Business Practices

- Modeled in 1999 on OECD guidelines
- Five core principles
  - Truthful communications
  - Adequate disclosure
  - Information practices and security
  - Customer satisfaction—internal complaints, refund or ADR
  - Protecting children
- Guidance for all online business; requirement for seal holders

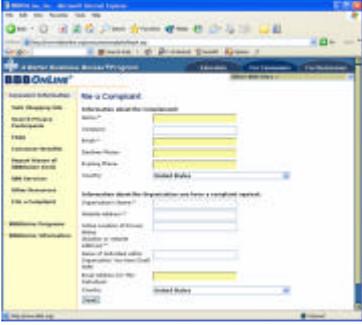


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The Better Business Bureau **BBB** **BBBOnLine** **PRIVACY** **RELIABILITY PROGRAM**

## Three Legged Stool

- **Leg 2: Third party dispute resolution**
  - Cost effective
  - Informal
  - Free for consumers
  - Apply law, codes and/or equity
  - Online or offline



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## Three Legged Stool

- **Leg 3: Trustmark identifies complying companies**
  - displayed at time and place consumer buying decision is being made

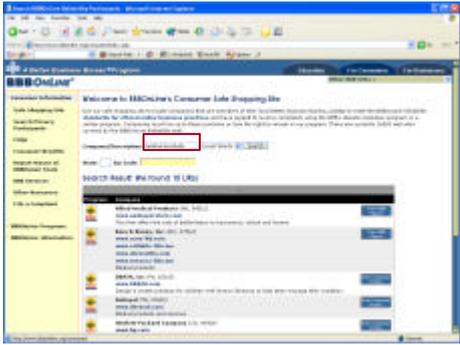



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## Trustmark Program Features Used by BBB OnLine

- **Safe shopping portal with searchable database**
  - 1.5 million searches annually

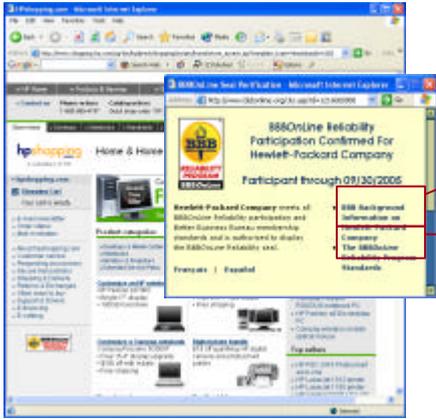


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## Trustmark Program Features Used by BBB OnLine

- **“Click to check” confirmation tool**
  - Links to reliability reports or profiles
  - Links to program standards
  - more than 6 million annually



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### The Cliché– “but the Internet is borderless”

- Yes, cyberspace *is* borderless and companies online *are* multi-national
  - Inadequate and inaccessible remedies
  - Inconsistent standards– government and private
- Cross border e-commerce a huge potential for consumers and business
- If its trust we want to build, why wait for treaties?

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### The Global Trustmark Alliance

- Cooperation amongst trustmark organizations
  - Americas, Asia and Europe
- Benchmark code
  - Harmony, not identity; “meet or exceed”
- Cooperation in dispute resolution
  - Common platform; compatible procedures; case cooperation
- Co-branded trustmark
- Share best practices and consumer education



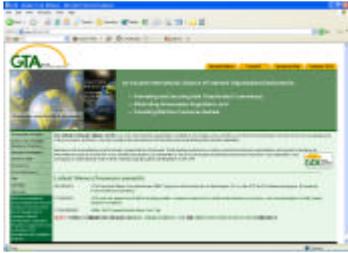
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## The Global Trustmark Alliance

- Draft code in preparation
- ODR platforms under development in Europe and US
- Web site under development
- Membership recruitment underway
  - Canada, US, UK, Japan, Korea, Taiwan, Singapore, Chile
  - Pan European support



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## Over-arching Issues Confront All of Us

- Does the existing trustmark approach fit with all regulatory environments?
- Is the marketplace ready for trustmarks?
- Is cross border cooperation a reasonable private sector objective?
- Is an ISO role helpful or not?

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**Optimism is Warranted  
But There is Much Work to be Done**

- Global cooperation timely
- Need to identify and develop resources
- This is about global governance -- not only e-commerce
- B2C e-commerce small—but growth potential is huge
- Rethink forms of self-regulation and consumer activism

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**Optimism is Warranted  
But There is Much Work to be Done**

- Role of International Organization for Standardization (ISO)
  - High standards or lowest common denominator?
  - Potential to delay other activities?
  - Would it address marketability issues?

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## Self-Regulation of the Online Marketplace

THANK YOU!

Steven Cole

COPOLCO—Prague Workshop

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(703) 247-9346

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## Self-Regulation of the Online Marketplace

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### The Better Business Bureau: What Are We?

It will be useful to tell you something about the BBB—some of you may not know us, and others may not really know what we do.

- Private sector, **business membership**, organization in US and Canada
- founded in **1912**—makes us different from newly formed organizations established specifically around ecommerce issues—we're a “click and mortar” organization
- **350,000 members**--mostly “SMEs”
- **Unique mission** for a business organization—that is, to “foster ethical relationship between business and the public”
- Provided **53 million** instances of service in 2003

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### Self-Regulation Tools and “Reach”

- 2 million **complaints** handled or referred
- Almost 1 million processed for company response-- Between 65-70% filed online
- 35 million **business and charity reports** distributed--13 million online
- these business reports include information intended to assist consumers in selecting a merchant with whom to trade—demographics about the product and service and company management; number of years in business; prime consumer contact; and BBB complaint experience and any relevant government legal actions, etc.--our unique contribution to self-regulation

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- we have a well rounded program, including consumer and business education, standard setting, and trustmark programs, both off line and online.

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### Self-Regulation of the Online Marketplace

My assigned theme is “self-regulation and the online marketplace.”

Consumers and business have **consistent needs** in the online marketplace

- it's mostly about trust—consumers can't touch and feel the merchandise online or assess the retail store ambience or the sales associate's demeanor—they need reassurance
- at the same time, businesses need to build trust, not only in themselves, but in each other so that the medium prospers for everyone's benefit

What does this entail?

- First and foremost—building trust requires **high** and **consistent** standards—consistent across oceans
- **Effective and accessible remedies** are especially crucial—courts are not the remedy of choice for most of us—it’s impractical with small purchases, and almost impossible across borders
- Third, **flexibility** is needed for nimble market responses—this is of course the prime selling point for self-regulation—and it is particularly important in a technology-driven environment likely to change at speeds much faster than any appropriate regulatory response can handle
- Consumers also need help in sorting out the **information overload**—the internet is one of those “watch what you pray for” stories—consumers want information—it empowers them—but there is so much that it is difficult to use it carefully—a **Google search** for medical products resulted in **more than 9 million “hits”** in a third of a second!
- **Incentives** for business are needed – some businesses will participate because they see the long term benefit to business from less regulation and greater consumer confidence in the market—but many need to be persuaded –tools that bring them to the table are the ones more likely to succeed in a difficult and competitive market
- Lastly, any systems need to be **affordable** for business and consumers (or better yet—**free** for consumers!)-

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### **The Trustmark Approach**

There are quite a few **self-regulation techniques** in use today—both for online and for brick and mortar commerce:

- **Private sector dispute resolution**, industry **codes of conduct**, and even informal, company-by-company, **voluntary action** in response to market pressure and regulatory threats all play a role.
- And, of course, **trustmark programs**—which is where I will spend most of my time this afternoon because they combine approaches, are receiving considerable attention, and have potential to forge international cooperation.
- We hear a lot about online trustmarks now, but this was a pioneering concept when BBBOOnline was launched in 1996
- **17,000 websites** now participate in North America—growing at more than 600 per month
- while the concept has been **replicated** and studied elsewhere—most recently in Chile-- its future is uncertain outside the US (more on this later)

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### **Three Legged Stool**

Most trustmark programs are based on what I call the 3 legged stool.

### **Leg 1: Code of Online Business Practices**

High “best practices” standards are the centerpiece of any trustmark program—they provide the “certification” standard

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**For example, BBBOnLine’s Code of Online Business Practices was**

- Modeled in 1999 on **OECD** guidelines
- Five core principles—truth, disclosure, privacy, satisfaction and remedies, and children
  - Truthful communications
  - Adequate disclosure
  - Information practices and security
  - Customer satisfaction and remedies
  - Protection of children
- BBB also requires companies to be in **business for a year**—we want to be sure that the customer experience is representative—
- and if we don’t already know the company, we do a physical **site visit**

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### **Leg 2: Third party dispute resolution**

**Alternative, or out of court, dispute resolution** is critical for a trustmark program—it’s a **safety net** for consumers and for the self-regulation organization-- as a check to trigger concerns about **continued eligibility**

- ADR is informal, free to consumers, affordable for business and cost effective—court actions and lawyers are usually not justified for low value (but important) consumer disputes
- “Equity” or fairness can influence a decision as much as “law” and decisions are usually non-binding

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### **Leg 3: Trustmark identifies complying companies**

Trustmarks are what allows the self-help feature of the program to work easily

- displayed **at the time and in the place** the consumer buying decision is being made—it is the **tangible market incentive** for business—a **distinguishing factor** separating them from competitors—justifying adherence to standards that often exceed legal requirements or making an ADR commitment not required by law

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### Trustmark Program Features Used by *BBBOnLine*

We have developed several additional techniques in our trustmark program that are now widely used. For example, a

#### Safe shopping portal with searchable database

- **1.5 million searches** are conducted annually
- 10 URL's are the result of a medical products search on *BBBOnLine*—not 9 million as in the Google search—and all 10 meet standards and subscribe to DR—one way to combat information overload
- allows consumers to **find reliable companies** meeting standards from 2 directions—the **merchants web site** or the **BBBOL safe shopping portal**.

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our “Click to check” confirmation tool plays an important role—

- confirms participation of the company
- links to reliability reports or **profiles** of the company
- links to our **program standards**, including our code
- more than **6 million clicks** to check annually

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### The Cliché– “but the Internet is borderless”

Yes, maybe it is a cliché—but **cyberspace is borderless** and companies online *are* multi-national. This reality has real consequences.

- Inadequate and inaccessible consumer remedies can be expected to be the norm in cross border B2C trade
- Inconsistent standards– government and private—are a real threat to business and a source of possible consumer confusion—we've seen some of that already
- Cross border e-commerce is a huge potential for consumers and business—but unless clarity in the applicability of standards is obtained, and an adequate remedial framework established, that potential will not be realized.
- No one country can achieve consistency or assure adequate remedies—we really need to find ways to cooperate across borders—and not just across European borders!

One solution would be new truly international governance procedures – agreed to by the world community. But, if its trust the business community wants to build, and if there is some urgency to that need, why wait for treaties to accomplish this? Why not manage these needs voluntarily?

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### The Global Trustmark Alliance

This is where the **Global Trustmark Alliance** comes in.

- GTA is a framework for cooperation amongst trustmark organizations in the Americas, Asia and Europe  
Its intention is to apply the **3 legged stool** to a coalition of local and regional trustmark programs. GTA will consist of a
  - **First, a benchmark code—harmony** is the goal, **not identity**; a “meet or exceed” standard; **balance** is needed between a **high standard** of business practices for credibility and trust and a standard that will be **achievable** in some very different regions and economies
  - **Second, cooperation in dispute resolution—case cooperation and technology cooperation**—a common platform, for example-- and **procedural harmony**.
  - A **co-branded trustmark** will tie it all together—the GTA trustmark will be co-branded with each region’s own local trustmark—in this way we will use locally developed good will in the home grown trustmark to bolster the international mark, which in turn will make the regional marks recognizable to consumers experimenting with ecommerce outside their home jurisdictions

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### **The Global Trustmark Alliance**

GTA is new, but **progress** is being made.

- A draft benchmark code is in preparation--again following the OECD model
- **ODR platforms** are under development in Europe and US—the US model will be **made available for adaptation** by partner organizations
- A GTA **web site** is under development
- And **membership recruitment** underway  
Trustmark organizations already part of GTA are in Canada, US, UK, Japan, Korea, Taiwan, Singapore, and Chile, with significant support from Pan European organizations Eurochambres and FEDMA and interest in China

So, **that’s where we are today**.

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**There are 4 over-arching issues I believe deserve much more consideration—starting today, and in months to come**

**First, does** the existing trustmark **approach fit** with all regulatory and business environments?

To begin with, we have always preached that **self-regulation works best when there is effective regulation**. In the US that has meant a number of things:

- A regulatory structure that is typically **broad and general**—for example the prohibition in the US of “unfair and deceptive trade practices”
- A key aspect of the US environment is the general notion that the more specific, **tailored, legislation** is enacted **only when** a **concrete need** is demonstrated by an existing real problem
- Together these characteristics leave lots of room for self-regulation to fill in gaps
- Finally, our government authorities pay **deference** to self-regulation when they can, and **follow up** aggressively when we request
- And this all hangs together because consumers in the US have a **reasonable level of trust** in self-regulation—certainly of the BBB

This is a very different environment than we see in Europe and Asia

- where there is a greater government involvement not only of business itself, but of voluntary self regulation—including funding and all that goes with it—
- where we find greater detail in legislative schemes, leaving less incentive for self-regulation to take hold; and
- less experience with and less trust in business self-regulation

A **second** over-arching issue is **whether the marketplace is ready** for trustmarks?

I think ultimately the answer is either “**yes**” or at least a strong “**maybe so**”. But we need to admit up front that the concern most of us had as recently as three or four years ago that there would be a **proliferation** of confusing trustmark programs has **not materialized**

But let me identify some of the issues I see here:

- First and foremost, e-commerce has grown, but at least for **B2C commerce** it is still a **small** part of the retail economy—1% of retail sales in the US, maybe 1.5% in Europe, but much less in Eastern Europe, and smaller proportions still in Asia, Africa and Latin America. Will there be a worldwide **demand** that will sustain these programs-- and when will it develop?
- Are the **start up costs justified** in light of the e-commerce market as it is now? The **BBB** trustmark programs were built in the context of a long history and **existing infrastructure**—will business organizations starting from scratch be **willing or able to invest** in the processes and staffing needed to get a quality job done given the uncertainty as to whether it will translate to cost recovery or losses  
--this has deterred a few European organizations so far, and has inhibited some Asian trustmark organizations from expanding,
- will **business-issued trustmarks be trusted by consumers** when delivered by an organization not widely known as being in the consumer protection business—it is a “bottom line” issue—will displaying a seal or trustmark label on a business web site earn

consumer confidence, justifying the cost? The jury is out on this, although there is positive evidence in the US—but is it the same elsewhere?

- I have also found a very widespread **reluctance**, especially in Europe, of government and consumer organizations being willing to accept or trust anything **less than full implementation of the law**—and **maximum verification** and audits to support the certification represented by a trustmark.
- Is this realistic? Is it desirable? **Resources** needed for such a regime may simply not be available—in the private sector *OR* in the government—what we need to figure out is **whether a reasonable balance of cost and assurance is possible?** A little less front end auditing and more attention to complaints on the back end

A **third** over-arching issue is whether **cross border cooperation** a reasonable private sector objective in 2004 or 2005?

- Here again the data is clear—**cross border B2C ecommerce** is very, very **small**.
- On the other hand, we at the BBB have seen **evidence of its potential**—our **bilateral DR program** with Japan shows there are SMEs that have become cross border without planning for that—and we are beginning to see some interest in a series of “how to” **e-export conferences** we are running with our DOC

The **final** issue I want to touch on because of your special interest in it is whether an ISO role in setting e-commerce business standards, as COPOLCO has recommended, would be helpful or not?

- This is a difficult question—COPOLCO has advanced this idea for reasons pretty much **consistent with the objectives of the GTA**-- consistency—encouragement of ecommerce—and promotion of cross border cooperation--the difficult questions center on **timing, process and implementation**—let me return to these shortly, at the end of my remarks

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**In my opinion, Optimism for a Global Alliance is Warranted, but There is Much Work to be Done**

I do think that maybe we need to be a little more patient, I need to be more patient--but **trustmark programs and the global alliance are timely and needed.**

- high voluntary ecommerce standards **raises public expectations** and that in turn **raises the bar** for private sector behavior as a practical matter—so let’s get on with it even if we are not ready to implement a full blown international trustmark immediately
- Moving ahead with this strategy will also **get us ready** for cross border 2C trade, which is likely not too far away

- In addition, the very existence of a working alliance might provide **encouragement for starting new domestic self regulation programs** in different regions, and will set standards for those programs for domestic use quite apart from the level of cross border trade

We also very much need to identify and develop **new sources of financial support**.

- Business organizations—yes -- but also international aid organizations and government—and private foundations
- What we are talking about, when you think about it-- is global governance -- not only e-commerce. Clearly there is a need for new methods for establishing rules and remedies in a cross border world where governments are inhibited by the realities of the limits on their legal power – ecommerce is perhaps a useful pilot project to show new ways of cooperation amongst citizens, business and government

In this regard, we also may need to rethink **forms of self-regulation** and consumer activism.

- For example—many consumer organizations want to influence governance and decision-making—and well they should—but they do not want to be sullied by taking business money (that’s what caused the UK webtrader program to terminate) or by being too closely connected to the self-regulation organization—quite understandable—and business organizations often jealously limit their governance systems to business members
- As a business self-regulator, however, I think we need more consumer involvement as a **partner in self-regulation**—I had hoped, for example, that the UK Which-webtrader trustmark effort might have survived and might have joined in the global alliance with business-sponsored trustmark organizations—in that way consumers would have been partners, not policemen, with the same business realities to face, yet with a special determination to get it right—
- in any event, some technique needs to be found so that a greater trust of self-regulation can be fostered,
- Maybe **co-regulation** is one answer—I confess to not being very expert here—but let me share a story about my biases—

when I met in Japan with the two major business organizations operating the Japanese trustmark program, and made a presentation about the GTA. After I finished one of the private sector people looked over at the government representative who was a courtesy guest, and said “if he likes it, we like it”! This is the fear I have for a co-regulation model where the government plays too great a role and actually makes it difficult for the private sector to be as flexible and creative as they might otherwise be.

However, I do appreciate the benefits of looking for new methods of governance, as I said, so maybe the cooperative roles of government, business and consumers implicit in co-regulation is a start

**[Slide 18]**

I promised to close with my views on the role of **international standards through ISO**. Again, lots of questions I struggle with:

- The question that first comes to my mind is would the ISO development process put a **roadblock** on other efforts now underway—such as GTA? I don't know.
- Would the consensus process end up with a low common denominator because of the nature of ISO membership—ending with a standard too weak for the developed countries and yet maybe too strong for developing countries?
- Is the right expertise available to ISO for this sort of project? And would it have an acceptable “home” in the organization? This would be a very different initiative from most others—I am on the work group doing DR and codes of conduct—also COPOLCO initiatives—and it is evident that a huge challenge in that effort will be to make sure that we obtain the necessary substantive substantive expertise—the job is more than about qms
- Would a standard divorced from implementation, enforcement, and branding be a useful effort? And would the use of the ISO brand create huge potential for misleading the public as to the bona fides of web sites purporting to follow the standard? I worry about this.

On the other hand, I confess that an ecommerce standard from ISO could command **wide respectability**, and would benefit from a built in **consensus process** that has the potential for broad based input from business, consumers and governments. Moreover, perhaps organizations throughout the world could then incorporate the results in their own trustmark or other programs. This needs a lot more thought and discussion.

**[slide 19]**

Thanks for your attention, and I look forward to the break outs this afternoon. Maybe the discussion can start there.