

CyberFraud

The BBB and Consumer Trustmarks

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I'd like to thank the conference organizers for their invitation to make a presentation here today and let you know that I'm honored to be representing the Council of Better Business Bureaus¹, BBBOnLine² and the network of more than 150 local BBB offices serving every major market in the United States and Canada.

Before I get started, I'd like to give you some background.

The organization I represent, the Council of Better Business Bureaus, is the umbrella organization for our 90-year-old system of 129 local BBB offices around the United States (plus an additional 15+ branch offices). Our sister organization, the Canadian Counsel of Better Business Bureaus, operates an additional 14 offices in that country. BBBOnLine, a subsidiary of the Council of BBBs, provides a single online marketing/support resource center for all offices in both countries.

Better Business Bureaus provide a number of common services. These include:

- ◆ Consumer complaint handling
- ◆ Mediation and arbitration
- ◆ Advertising review and self-regulation,
- ◆ Charity accountability evaluation
- ◆ Reports on company/charity performance--"reliability reports"
- ◆ Consumer and business education

These are all incorporated into our:

- ◆ Internet trust and confidence programs

While the subject of this conference today is "CyberFraud", the previous speakers have addressed this issue with considerable knowledge. I'd like to take a somewhat different approach.

In saying this, I don't want to imply that the BBB system is disinterested in "cyberfraud"; quite the contrary. We know a great deal about grassroots consumer complaints -- including cyberfraud. When North Americans have complaints and are looking for third-

¹ See: <http://www.bbb.org> or <http://www.adr.bbb.org>

² See: <http://www.bbbonline.org>

party assistance to help get those problems resolved, we're the organization on the local level consumers probably most frequently turn to for help. Last year, the BBB system handled slightly in excess of 3 million requests for complaint assistance. These complaint contacts resulted in over 400,000 formal complaint cases handled by local. A very significant number of these complaints involve old-fashioned frauds and schemes, buffed up and laced with loads of "cyberbabble" for the new electronic economy.

BBB's regularly collaborate with law enforcement agencies at all levels, in their own communities and across international borders. For example, 65 of our local Better Business Bureau offices now provide complaint data to the FTC's "Project Sentinel" database, and more are doing so every quarter.

The BBB system believes it is vital to developing and maintaining consumer trust and confidence in the marketplace -- and to the interests of legitimate businesses -- that cyberfraud be aggressively identified and prosecuted. It is equally important that consumers be educated to avoid the numerous frauds and schemes which are as prevalent online today as they have been prevalent off-line historically.

So, with the balance of my time this morning, I'd like to speak a bit about the correlative - the role of business self-regulatory organizations like the BBB in helping consumers find good companies with which to do business.

I believe the Internet provides a terrific environment for successful self-regulation for four very important reasons:

First of all, as we've already seen this morning, the Internet is not easily regulated. It crosses borders as easily as we used to cross streets, and even when we catch a fraud in the act, we sometimes have difficulty figuring out what jurisdiction's laws ought to apply, let alone how to enforce them effectively. In addition, the culture of freedom spawned by the technology often resists regulation.

Second, business wants e-commerce to explode, but has increasingly recognized that consumer trust is crucial to this success. Even the most recent studies show that the Internet is still a scary place for many of our citizens -- and that is actually becoming truer as more of the mainstream population (as opposed to the technology mavens) move online.

Third, all surveys from the earliest days of e-commerce through today show that considerable consumer hesitancy to buy online is based on concerns or fears over security, privacy and reliability. Highly visible examples of various types of cyberfraud only heighten these fears.

And *finally*, business has a reasonable fear that technology and our understanding of the marketplace are such swiftly moving targets that additional regulations adopted too quickly, and not finely tuned to specific demonstrated and serious problems, will thwart the very growth it would be intended to promote.

In short, there is a mutuality of interests here shared by government, consumers and business. That convergence makes it a certainty that the legitimate business community wants to provide meaningful and voluntary consumer protection on the Internet.

So, even if we could eliminate most of the cyberfraud we're discussing this morning, we'll still have the challenge of finding a way to help consumers sort through all the Internet "clutter" and find safe companies to patronize.

Business has been pretty creative here. We are beginning to see insurance backed guarantees offered by some web sites; credit card charge backs applied more broadly than legally compelled; escrow services; customer satisfaction rating schemes, among other devices to protect consumers and enable them to make wise choices.

We believe *BBBOnLine* has served as an example here. Our reliability seal program was launched in 1997 (though it seems like the Middle Ages now). We award a seal to

companies that promise truthful advertising, responsiveness to customer complaints, have no significant marketplace legal problems, and make a commitment to formal dispute resolution procedures run by the BBB or other ADR providers. Our seal holders³, covering nearly 10,000 web sites. Every one of those sites required a review by BBBOnLine, and a number of sites required changes in their advertising to become complaint. Our experience has been that the newer, entrepreneurial “players” are not always familiar with the rules of the game, but most want to get it right, and serve their customers honestly.

I suggested that there were four reasons why the environment was ripe for self-regulatory efforts. We also believe there are three critical components for self-regulation to succeed in this new environment. We have taken to calling it our “three-legged stool”:

- We need tough online “best practice” standards adopted by the business community voluntarily. These may go beyond many existing legal requirements, but they would not attempt to enforce the laws of any particular jurisdiction. Voluntary standards will achieve predictability and harmony for the business community in a more practical and timelier fashion than the understandably more ponderous legislative process.

The BBB Code of OnLine Business Practices⁴ – following a nearly 12-month drafting process that included more than 1000 comments from industry, government and consumer groups -- was overwhelmingly approved by the North American BBB system in September. Adherence to the Code will become a requirement for all companies participating in the BBBOnLine reliability program by the end of this year. You can review the Code at the BBBOnline.org website.⁵

- We absolutely must provide out of court alternative dispute settlement processes. BBB experience in North America tells us that consumers do not go to court in large numbers. Not only is it impractical (given the value of the goods likely to

³ See: <http://www.bbbonline.org/reliability/index.asp>

⁴ See: <http://www.bbbonline.org/code/index.asp>

⁵ See: <http://www.bbbonline.org/intl/code.asp>

be involved and the cost and inconvenience of lawyers and the courts) it is intimidating. The potential for cross-border transactions on the 'Net merely emphasize this impracticality. We believe these ADR approaches should be voluntary with consumers, and should preserve legal rights and remedies grounded in law. While legislative work continues, good consumer ADR schemes – of which there are a number of examples – can quickly and simply resolve most consumer disputes, using the aforementioned “codes of conduct” and principles of equity as the basis for fair, timely decisions.

As I've previously mentioned, the BBB system operates the largest consumer dispute resolution program in North America, if not the world. Last year, nearly 40 percent of our formal complaints were filed by consumers online⁶. We have trained and certified approximately 4000 arbitrators that hear consumer cases. In partnership with PricewaterhouseCoopers, BBBOnLine announced at The Hague in December⁷ that we have developed an online problem resolution system and we are currently seeking a development partner to build this state of the art, technologically efficient, and consumer friendly system.

- Finally, there must be a way for a consumer to determine which firms have committed to good codes of practice and effective ADR. For that, we believe a trustmark provides the answer. We believe the Internet can provide consumers with the information they need to make intelligent choices at the “right time and right place”—when and where they are considering purchases. Technology solutions helping web visitors to sort and search for trustworthy companies may be possible, but it is crucial that they be very simple for consumers to use.

This three-legged stool is the strategy underlying the BBBOnLine program -- and the model we have been advocating globally for the past two years.

In the borderless world of e-commerce, however, the approach I've suggested is not without problems.

⁶ See 1999 complaint statistics at: <http://www.dr.bbb.org/news/comp-1999.cfm>

⁷ See: <http://www.bbbonline.org/about/press/2000/121100.asp>

If one imagines hundreds of different “Codes”, hundreds (or perhaps thousands) of trustmark programs in various countries and sectors, using hundreds (or perhaps thousands) of ADR schemes, the problem quickly becomes apparent. How will a consumer possibly know which “trustmarks” to trust?

We believe there is a critical need for “harmonized” voluntary standards, interoperable online DR processes and a common “look and feel” to trustmark programs. Consumers in the U.S. considering a purchase from web sites in the US, Italy, Australia or Japan, should be able to make intelligent comparisons not only of the price and quality of the goods and terms of service, but of the business practice “safety net” that surrounds any transaction—including the business practice standards and dispute resolution procedures.

To that end, BBBOnline announced⁸ in April that it has joined forces with Eurochambres⁹ and the Federation of European Direct Marketing (FEDMA)¹⁰ to create a transatlantic trustmark program to include all three of the elements I've just identified -- a harmonized Code, interoperable ADR and a common "trust alliance" seal. This is a serious alliance -- BBB brings to the table a fully operable program, nearly 300,000 business members and 10,000 seal holders. FEDMA represents nearly 10,000 direct marketing organization in 14 European countries. And Eurochambres -- through 35 national chambers in Europe -- brings nearly 14 million small and medium-sized businesses. It is our goal to have all the elements of that transatlantic system in place by the first quarter of 2001, to forge other such relationships and, ultimately, to bring these systems together in a single global alliance. Since the announcement, we've had serious expressions of interest from similar self-regulatory programs in the Pacific Rim and South America.

Trustmark programs have an obligation to live up to their promises -- to be rigorous in accepting participants into their programs, insistent that their codes of conduct be followed, scrupulously fair in the administration of their dispute resolution processes and willing to publicly revoke a trustmark when breaches of program standards arise.

But now we come full circle -- back to cyberfraud.

⁸ See: <http://www.bbb.org/alerts/us%20fedma%20eu.asp>

⁹ See: <http://www.eurochambres.be>

¹⁰ See: <http://www.fedme.org>

One of the more serious offense a criminal can commit is that of impersonating a law enforcement officer or agency. Nothing throws a cloak of legitimacy around a scam faster than statements or suggestions that the fraudulent operation is actually an agency of government or law enforcement.

Similarly, we've noted a significant increase in the number of questionable businesses and outright frauds that are falsely claiming to be participants in one of our trustmark programs or members of the Better Business Bureau. Our legal staff devotes considerable resources to tracking these "counterfeit" seals down and getting them removed. But the perpetrators get bolder every day. We've had companies creating phony links to counterfeit BBB "glowing" reports about their operations. We've had telemarketing companies tell consumers to call the BBB at "this special number" -- where (you guessed it) the telemarketers answer and give the consumer a glowing BBB report. We have companies simply copy the BBBOnline graphic and paste it onto their site. Now it is true that the "click to check" features of the logo do not work, but the scam artist is counting on the fact that most consumers won't actually check.

Here's where we need the help of the global enforcement community. In the context of consumer trust and confidence, this is more than just a matter of simple trademark infringement -- this is a false and deceptive business practice of the most serious kind, and it should be dealt with harshly. In the U.S., local BBBs have had excellent cooperation from local offices of their state attorneys general. We need that help to continue.

The aggressive pursuit of cyberfraud will benefit both consumers and those legitimate businesses that must compete against the crooks. Self-regulatory programs can help consumers find better businesses with which to deal. And active cooperation between the enforcement and self-regulatory communities is vital to ensure that a free marketplace flourishes in the e-economy.