

>> Male Speaker: These are the ones that are reporting back.

>> Michael Jenkin: Right.

>> Male Speaker: We suggested those.

>> Michael Jenkin: Okay, good. Okay. I guess there's a few stragglers outside, but I think we should get started. Thank you for participating in the breakout sessions. I hope you found them enjoyable and an opportunity to have a dialogue. I noticed everyone was very busy and very engaged, and that's always a great sign. Our final session here, what we're going to do is a two-part exercise. First of all, we're going to ask the breakout group moderators to provide a short summary of what they felt was the discussion in their group and, to the extent that they can do it -- and I know some of the discussion was, perhaps, more general than others -- what sort of conclusions they felt came out of their groups. And when we've heard that, we have a panel here from the main stakeholder groups, in essence, consumer groups, of course, represented by Susan Grant. The business side, represented by Joseph Alhadeff from BIAC, the government from Graham Branton, and international organizations from Andy Wyckoff from OECD, who some of you are very familiar with.

>> Male Speaker: Maybe just have them come up here.

>> Michael Jenkin: Yeah. And so, what I'd like to do is ask each of the moderators to come up, and I'll ask each in order, and if you could perhaps use the lectern here because it, I think, will make you a little more the center and focus of attention, and give a short résumé of what you heard and then we'll turn to the panel. So, first of all, I'd like to ask moderator of the B2C, which I think was Graham, no less -- yes, Graham? -- who we're working off his feet today.

>> Graham Branton: Sorry, I'm just finishing off my cookie and my coffee. No rest for the wicked. [Laughter]

>> Michael Jenkin: You said it, not me. [Laughter]

>> Graham Branton: We had quite a good discussion, actually -- I was very pleased -- and lots of ideas coming out of it. So, what we actually tried to reduce this to was ideas of things that we might look at when coming to revise the guidelines, and some of these ideas -- And we deliberately, consciously decided to be sort of off the wall a little bit. And some of these ideas won't work, and one or two of them might have legs. So I'll throw them out, anyway, and we'll see what happens. The first kind of thought we had was that payment protection is an absolutely vital aspect of confidence in the Internet. So we ought to have something in the guidelines about the need to secure consumer payments in all circumstances, not just that they're safe so they sort of can't be hacked into, but that the payment is -- you actually get your money back if the goods aren't delivered, and we could try and work that in somehow into the guidelines because it's an absolutely fundamental aspect of confidence in the Net. There was some concern about competition aspects of that and, particularly, PayPal perhaps being in a dominant position and that we'd have to be careful not to reinforce that in the way in which we worded anything, but the feeling was, I think, that that was something that we had to be careful about, but we might be able to get around. Second issue -- we had an interesting discussion about whether there should be some sort of standard for transparency of personal profiles, and this is the whole issue about behavioral advertising that was discussed at length. The people's cookies or sort of roaming profiles and so on might be being collected and transferred between businesses without them even knowing about it, and that, somehow, we ought to at least make sure that people are given the option to have that taken away, and so that they could search freely or at least given the choice as to whether they'd be applied or not. So there was some concern that we were getting too granular there. But there was also a feeling that the principle of transparency for data mining in the broadest sense and consumer consent was important to get across there, and this wasn't just a data-privacy issue -- it was actually a B2C issue, as well, because it related to marketing. There was a feeling that we ought to be saying something about consumer education, as well, in relation to use of data, if possible. The next idea was one of Net neutrality for intermediaries, that there ought to be some sort of principle that any intermediary who is presenting information apparently in an objective fashion actually is presenting it in an objective fashion. We talked about price-comparison Websites. We talked

about search engines. We talked about people presenting -- putting up customer feedback online, that it actually -- there needs to be a principle that actually it is honest and it's not engineered and that all -- if you're gonna put feedback up, you've got to put all of it up. You can't just pick the positive feedback and delete the negative -- so some sort of idea about neutrality for intermediaries, no distortions. Another one was the idea about intermediaries having to make some sort of effort to deter criminality. And this was -- this is obviously very difficult, but the efforts that they make should be proportionate or reasonable, that they must be prepared to make some sort of reasonable effort to assist with law-enforcement efforts -- something along those lines. We had a nice discussion about trust marks. And there was a feeling that it would be wonderful if we could get some sort of trust mark established at an international level, but I think everybody agreed that would be extremely difficult. It's hard enough to get them to work at a national level and that the infrastructure required would be quite onerous, but there was a feeling that that would be sort of nice to have, but maybe impossible to deliver. Some idea in the guidelines about taking the concept of unfairness a little bit further. I think the feeling was that, in most existing OECD countries, there are principles relating to unfair contract terms and unfair commercial practices, which are quite well established, and a lot of the problems that exist with contracts and privacy notices being impossible to understand and often containing clauses, which are a little bit unreasonable, that those sorts of problems could actually be dealt with to a large extent by better enforcement, but there was also a feeling that, since the OECD guidelines were maybe used as a model in developing countries that we ought to try to establish a little bit how we think unfairness - - concepts of unfairness might apply in those sorts of scenarios. Oh, this was a good one. We think there ought to be an obligation to use plain language or something in the guidelines about using plain language that consumers can understand or that nonlawyers can understand when talking about what people's rights and obligations are. And we also talked about promoting model contracts and perhaps something to do with the ICC or with other bodies that simple model privacy notices or end-user agreements could be drawn up that small businesses would be able to use and that establish some sort of clarity. We talked about a clause on responsibility to vulnerable consumers. We talked not just about children, but also about addiction and targeting addicts and not just for marketing, but, also, for controlling use. One of the members of the panel talked about people who are addicted to gaming and who are sort of online for 48 hours and forget to eat and things, which I find hard to imagine, personally, but, apparently, it exists. [Laughter] Forgetting

to eat is unbelievable, but -- Anyway, we talked a bit about interoperability and we thought perhaps some sort of obligation would be that member countries should be vigilant in preventing abuses of dominant position by those who have proprietary software. That was about as far as we thought we could go. People wanted to promote open source, but we didn't want to deter innovation, so a very difficult area. Everyone agreed we didn't really have the solution, but something around prevention of abuses of dominant position, which people generally have in their competition laws, anyway, we thought might be worth saying. In terms of digital content, we felt that the guidelines -- An issue that wasn't really discussed much, but which is really hard to avoid when talking about consumer rights, is what the nature of the contract is because there's a lot of debate about whether consumers have actually purchased a good or purchased a service or purchased some sort of intellectual property license, and there's a lot of lack of clarity about what the actual contract has been about, and this leads to consumers being surprised. And we heard stories about people's things being switched off when they were in the middle of reading them because the business thought they'd given them a license to use the item for a temporary period, and the customer thought he'd bought something which he could use whenever he wanted to. And this is a debate which is going on at the national level around the world, but it's so fundamental to the nature of consumer protection for digital content that we thought, however hard it is, it's not something that we could probably avoid. And then the final point was about mapping the law on e-commerce -- and this came up in the enforcement session this morning -- and the trying to find the points of similarity that exist around the world and trying to set that out. And this was particularly mentioned by a couple of members of the group who were from developing countries, who said they thought that would be very useful. And that took us on to talking about perhaps -- talking to UNCTAD and links with other international organizations about how to sort of spread awareness of e-commerce and consumer protection in e-commerce to the wider international community. And that's about as far as we got. We covered a lot of ground. Sorry for pinching other people's portfolios. We ranged pretty far and wide, but we thought we'd throw it out there. So there we are. Thank you. [Applause]

>> Michael Jenkin: Well, you know, when I started this out at the beginning of the first day on Tuesday, I thought, "Well, we'll have a few things," and, already, I think we've got a meal from the first panel and, certainly, a lot of interesting ideas here reflecting, in part, I think, how much things have changed in the last 10 years. You know, I was on -- I chaired the group -- the working party

that did the original negotiations on the guidelines. And I know, you know, after a decade, your memory dims and you can't remember all that well what was said, but I don't think a third of the things here that are down here right now -- even a third of them were even talked about 10 years ago. So it's really, really fascinating stuff. And we've got four more groups to go. So we're gonna have a real meal here. So, let's -- The next group is consumer to consumer and the participant of Web, and I think Pippa is doing this one. Yes, thanks, Pippa.

>> Philippa Lawson: Well, I think this is really is the area where you're seeing things that we didn't even think of 10 years ago, so we had a really good discussion and lots of ideas that I think sort of fall into five categories.

>> Michael Jenkin: Yes.

>> Philippa Lawson: So, the first area that we felt right away -- because this is still so new and developing so fast, we think it's worthy of a special OECD study, we think -- in terms of gathering statistics, identifying new indicators and new metrics that are needed, just to understand the issue of consumer-to-consumer commerce and associated with social-network sites and other participant-of-Web issues, but C2C commerce, at least. What forms is it taking? How do we see it developing in the future? What are the issues that are arising from it? We don't have all those answers for you right now, and we think that the wonderful OECD staff, Andrew in particular, would love to take on another study. So, and, obviously, the question of to what extent the guidelines cover these questions right now. Also, we thought that the scope of electronic commerce maybe should be considered, in terms of possibly broadening it beyond the Internet, at least in the context of payment mechanisms to include ATMs and possibly RFIDs and other electronic media that are used in commerce. So that was one category of issues. Another one was when we started discussing and noting the use -- the increasing use of social media for commercial purposes, noting the blurring of commercial and noncommercial activity online and noting that personal data is increasingly being used as currency in the online context -- not just money, but data sometimes instead of money. We think that the OECD should consider expanding the guidelines to cover some noncommercial activity, as well as commercial activity, or perhaps developing a new set of guidelines for this kind of activity. [Chuckles] So, then, a third kind of area of discussion we had

was around the issue of consumers acting as sellers in the online context or as purchasing, not from businesses, but from other consumers, and, clearly, the current guidelines -- I mean, they state that they apply only to business-to-consumer context. So we're outside of that context now, and the first point is that we should revisit, look at the guidelines, and say, "Well, do they need to be restricted to business-to-consumer, B2C, context, or should we just take out that restriction and say it doesn't apply to B2B, but leave it open to apply in other contexts, as well? Or, again, should we look at developing a separate set of guidelines for this C2C commerce?" If you are looking -- If we do look at the current guidelines in their application, then we'd also want to look at the definition of business. And that leads to the second point here, which is that we need to carefully define roles when attaching responsibilities. And so, you know, when is a consumer a business for the purposes of the guidelines or the rules that the guidelines are proposing be put in place by member states? Third point is -- and I think we all agreed that, at a minimum, the basic disclosure obligations applicable to businesses in the guidelines should be extended to anyone who's selling online. Another point is that governments should make clear and, again, be very up front in disclosures but publicize, maybe, and do a better job of communicating with their publics about what the obligations of a seller is -- what the obligations of a seller are with respect to sales tax because that -- people who are just an individual who's going online and selling, usually, we think, doesn't know whether they owe tax, whether they have to charge tax and remit tax to the government. So without getting into the question of what those rules should be, whatever they are, they need to be better communicated to consumers who are going online and selling. Fifth, in the area of dispute resolution, again, we felt that, particularly given the increasing number of problems that are happening in this marketplace, that disclosure is really critical here and that consumers need to understand what their redress options are. And in particular on that point, we think it's very important that there is consumer education about the different redress implications of each different payment mechanism, so that consumers realize that if they're just paying by a debit from their bank account in Canada and many other countries, they're not as protected as they are if they're using a credit card, and that's an important thing for consumers to be aware of. Okay. So, now, moving on to the role of intermediaries, which, of course, we discussed at length, we understand that the OECD has a study under way on this and will be publishing a paper on the role of intermediaries. We want to make sure that that study does address the C2C context, intermediaries in the C2C context, as well as in the participant of Web more generally. We all felt in our little group that

there was a role for intermediaries, at least in identifying fraudsters, repeat offenders, and that sort of thing, and assisting governments in going after the bad players who are polluting these marketplaces. We also felt that the rules -- whatever the rules are regarding intermediary liability, and we don't have the answer -- but it needs to strike a balance. It needs to, on the one hand, not silence legitimate consumer reviews and consumer criticisms online, but on the other hand, it does need to allow for victims of defamation or copyright infringement or other real wrongs to have some fair recourse. We don't -- I know that's the challenge. But we want to make sure that you don't go to one extreme or the other. And we didn't -- This didn't come out of the group, but I just want to pop in the point for those who don't know that the Civil Society -- information society -- Advisory Committee, CSAC, has actually published a paper on intermediary liability, and we expect that the OECD will be considering that in its -- in its study of this issue. I think that was made public in August this past year. And the final area, I guess, here is in your fraud and deception and misleading practices. So we believe the guidelines need to cover nonbusiness deception, as well as deception by businesses, that this is an important -- a really important area and maybe worthy of expansion. I think the previous group said the same thing, maybe, that -- and we noted here that the FTC has, I think, recently published guidelines on the use of endorsements and testimonials in online advertising and that these provide a very nice precedent in a couple of respects. First of all, they apply to the context of blogging and other word-of-mouth online marketing and, also, they say if -- that they will apply wherever there's a payment, whether it's in money or in kind. Then the alleged endorsement constitutes an endorsement, and that that is something that the OECD can look to in this area -- also, that the rule in the guidelines against unfair terms should cover social-networking sites, which, I would argue, are businesses, anyway, but if there's any doubt, we want to make sure that that rule applies to large intermediaries and social-networking sites because a number of studies by authorities and consumer groups have shown that the terms of service of these intermediaries are not always fair or understandable or realistic, and that we should revisit disclosure rules in the context of the terms of service of the intermediaries in the C2C and participant-of-Web context. And unless I've forgotten anything, I think that covers our main points. [Applause]

>> Michael Jenkin: Well, thank you, Pippa. That was really fantastic. Again, I think I've covered even more paper here. We are going to have a real challenge at the end of this session. Right. The next one is on mobile commerce and children, and I think, Stacy, you're going to cover that.

>> Stacy Feuer: Thank you, Michael, and thank you to everyone who was in our group. I have to say that our group actually turned out to be a small group, but, I think, a very representative group. We had four government people and two businesspeople and two consumer people. So, really -- And we had a lot of geographic diversity, so I think it allowed us to really think through these issues. I think our group was a little bit different from the other groups in that we talked more in depth about project ideas for the committee. And I have to say I probably influenced that after hosting this conference with the OECD -- I said, "What is actually achievable and manageable for us to do?" So, with respect to mobile, I have to say that Susan Grant, who moderated the mobile session, and I both have worked a lot with many of you on the committee's product in 2008 on emerging issues in mobile commerce, emerging consumer-protection issues. And so, in some ways, I think we felt that we had covered, at least with some initial policy ideas, some of the mobile issues. And I think we took it for granted, although this might need to be made explicit in the guidelines, that the guidelines cover mobile commerce, as well as Web-based commerce. With that said, we thought and this dovetails with some of the proposals, that an interesting project -- and, again, we're not talking about amending the guidelines here -- but an interesting project for the committee to do might really be to look at mobile payment systems and do some sort of comparative work. What are the mobile payment systems that are being used in different countries, what are the consumer protections that exist, and what are the problems? And we thought that it might actually help us shed light on two issues. One would be on the payment issues themselves, but, also, on some of the issues that we've talked about with authorizations and age verification and the mobile and children's space. Turning to children, we talked about the fact that the guidelines already say that businesses should take special care in advertising and marketing to children. And, again, we really focus more on an achievable project, rather than what should the guidelines say, and one thing that we thought that was interesting -- so I'm glad that Pippa alluded to the FTC's recently published -- updating of its guidelines on endorsements and testimonials -- is that it might be very interesting to look at all of the different types of advertising to children in the online environment, so from the ad for games to social networks and, one, get a sense of what is out there

in terms of advertising to children to, how is that covered by existing consumer protection laws, since most of us are, in fact, consumer protection authorities and we all have legislation against misleading advertising? And, three, how do you then -- how do those laws then get applied, in respect of the blurring? And so the FTC guidelines were discussed as a model. They don't -- clearly only apply to children, but the idea that there are some interpretations that you might want to make of your existing law where there's some blurring. And so that was, in a way, the issue with blogging. Is this a personal opinion, or is this an advertisement? And are there any issues that we can identify? But, again, both of the projects, I think that we were thinking were coming out of this were really scoping projects, where we might get more of a sense of what's happening with these issues and less about really actually revising the guidelines. [Applause]

>> Michael Jenkin: Okay. Digital content next.

>> Female Speaker: Am I the final word here?

>> Michael Jenkin: No, there's one more after you.

>> Female Speaker: Oh, good, okay. [Laughing] Well, we convened over in the corner, and it was largely the panel that you heard. And for those who are here, we had a very lively discussion. And so I had some trepidation when I saw everybody convening in the corner, but we figured everything out. [Laughter] We now have -- We've got all the answers. Actually, it was a very, very, very helpful discussion, and we continued our discussion and the issues that were raised. And we started out with a discussion about the disclosures about digital-rights management conditions, and there was quite a sense of unanimity on the issue, I think. The current guidelines, really, in general terms, I think, cover what we all hope will happen. And this is on page 34 of your program, the information about the transaction, which requires a business engaging in electronic commerce should provide sufficient information about the terms, conditions, and costs associated with the transaction to enable consumers to make an informed decision about whether to enter into the transaction, and it goes on from there. Our sense was that better disclosures are needed about the limits on the use of digital content that is being purchased. The trick, of course, always, is figuring out how to communicate to consumers who are not necessarily technologically

sophisticated and what are the key material limitations on youth that would need to be communicated? One that we thought is a key limitation that consumers need to know is about interoperability, and the guidelines now actually do offer some specific examples of conditions of the transaction that would be viewed as material. And one of those -- again, listed on page 34 -- is restrictions, limitations, or conditions of purchase, such as parent/guardian approval requirements, geographic limitations, which sometimes arise in digital content, or time restrictions. And we thought one thing, perhaps, to think about would be what DRM limitations might be included in that provision -- for example, issues of interoperability. So that was one thought we had. There's always a concern about adding to information disclosures, and we talked a good bit about that. There's a concept called "human readable language," which is to simplify and to translate for consumers in a way that they can truly understand. And it may be in this kind of area or maybe beyond this area that it would be very useful to study what consumers could understand, what kind of language would be needed, and what terms consumers would consider material. We've had the experience with the privacy disclosures of way too much information -- they don't get read. So what are the key material items that consumers would need to know in order not to be surprised after they buy their product? In addition, in another area of disclosures, we went on to talk about post-purchase changes in usages of products, and then that expanded beyond our jurisdiction of digital content to terms of use and user agreements that can constantly be updated and changed, much to the surprise of consumers. There was a good example of that with Facebook recently. And so we thought the guidelines may want to address this kind of post-contracting change in terms to be sure that a timely notice is given and, again, conspicuous notice. And one way to give conspicuous notice is to highlight for the consumer what is the change and how does it compare to the past consumer agreement? And in addition, the suggestion was made that the Website should really keep all of their historical terms of agreement available to consumers so they can compare themselves what is new and different. We've discovered this in the area of -- in the states, at least, in credit-card transactions, where a change in terms have become very, very commonplace. So that's another area. We also discussed an issue that came up at the panel about lack of choice. That is the tie-ins. Kindle -- if you buy a Kindle, you can only -- if you buy content, it has to be read on a Kindle. The tie-ins with the iTunes on iPod, and so forth. And the decision that was this is probably -- it's very much of interest to consumers, but it perhaps is more of an area for the Antitrust/Competition Committee and that, perhaps, a workshop should be conducted on that

particular issue -- it probably doesn't fit under the guidelines. And we returned, also, to the enforcement issue of going after these Websites that are commercial Websites selling pirated digital content. And there was a sense here that this is an important area to be pursuing and needs to be pursued in the judicial system so that we get the due process that's essential, but that more effort should be put into going after these Websites and that, perhaps, what could be useful, if it hasn't been done -- there was some question about whether there's already a protocol that involves these kind of cases -- but some kind of a protocol for making it easier for law enforcement to go after these Websites that are usually very far removed in countries we don't even know about, but they can be shut down in the country -- the ISP can shut down these sites after a judicial proceeding. We think this is something that is of great interest to consumers to have these sites removed from the Internet. And then, finally, there was an issue raised, which is kind of a general one, and it has to do with -- the focus throughout the meeting has been about increasing the cross-border sales and creating a uniform, digital e-commerce world and just a desire that there be sensitivity about the unique cultures in which products are being sold and that we want to retain that, as well. [Chuckles] So it's a balance, of course, but there was some interest in just putting that kind of on the table. Now, I have all my friends here, who were part of that. Did I skip anything or say anything that you would like to object to? [Applause] [Laughs] Okay. Very good. Thank you very much. [Applause]

>> Michael Jenkin: Well, thanks very much, and the final report session was on regulatory frameworks and accountability. And I think Francis is going to give the feedback on that.

>> Francis Amand: Yes, I'll try to make a short résumé, but Etelvina will complement if necessary. It might be necessary. While we had a very tough, long, interesting, and controversial discussion, most of the time was used for enforcement cooperation enhancement, and the other issues were not so much debated than this one. There was no consensus on the proposal of -- Tamas made this morning to identify a common baseline that would be used as a basis for exchange of information. There was no consensus because many countries thought it would be too formal and too committing and that the OECD level is not the good level to give a definition of enforcement cooperation. So what we have reached is a limited general agreement. The general -- Sorry. Another aspect of the proposal of identifying a common baseline was that it would start a race to

the bottom and that people were rather upset about that. So the general agreement that we have reached is limited, but it exists, and it says that we had a general agreement that enhanced enforcement cooperation is desirable. Second, that mechanisms to facilitate and enhance cooperation should be explored, especially sharing information mechanisms. Three, that cooperation is to the extent of the mandate and capacity of the enforcement agencies -- That's what I said when I said that to committing publication wouldn't fit the idea of many countries. That was three. Four, that complexity of both compliance with various aspects of laws across jurisdiction and enforcement across jurisdiction should be considered -- only considered. Five, that, where appropriate...and other nonjudicial sources of resolution should be explored. That -- That's what we agreed on. The general feeling of the group was that principles written in the guidelines were good and remain good and that the guidelines deserve only small revisions. That's what we have reached for an agreement. [Applause]

>> Male Speaker: Okay.

>> Michael Jenkin: Okay, well, we've had a very -- thank you very much, Francis. We've had lots of food for thought here, and we are now going to turn to our panel of discussants to comment on what they've heard from the perspective of the stakeholder group or sector that they represent. Now, I'm going to take this in the order that's down on the program. So, Susan, I'm gonna ask you to speak first, if you don't mind, from the consumer perspective.

>> Susan Grant: Thank you. And thanks to the OECD and the FTC for putting on this great conference. It's hard to wrap up three days of very interesting and wide-ranging discussions in the space of a few minutes, but I'll do my best to do that. I feel as though my head is exploding from all of the information that we've shared. With permission, I'd like to borrow from something that a previous speaker said -- two words -- "growth" and "change," because I think that that helps me to sum up the whole three days very well. We can see that e-commerce is growing, and the 1999 guidelines have had a very positive influence in that, but we can also see that e-commerce is not growing to its full potential yet, especially in cross-border. We can see that the amount of money that consumers are spending in e-commerce is growing, but we also see that the number of complaints that consumers are making is going up. We can see that the choices for goods and

services that are available to consumers are growing, but we can also see that that can be very confusing for consumers. Now, moving on to change, we can see that mobile commerce and various kinds of digital products and services are changing the marketplace. We can see that interactive and social aspects of the Web are changing consumers' expectations about what they should be able to do and about the responses that they expect from government, from businesses, and, indeed, from consumer organizations. We can see that, in dealing with some issues, such as copyright and Websites where consumers can voice complaints about businesses that some businesses are having trouble adapting to this new paradigm. We've had some controversial statements made by CFA's own Mark Cooper about the need to change from market fundamentalism to a more demand-side consumer-protection orientation for e-commerce, and I would point to the challenge of privacy and behavioral advertising as an example of that. We can see that, as e-commerce has rapidly changed the traditional country-centric enforcement model, we need to change our enforcement responses. There are many more issues that have been discussed, including the use of new technology to change the way that we mediate consumer complaints. So we have a lot for the OECD and all of us to think about, as we head into the next 10 years. Thank you. [Applause]

>> Michael Jenkin: Thank you, Susan. We'll next move on to Joseph Alhadeff from BIAC.

>> Joseph Alhadeff: Thank you. I think -- You know, I try to think what would happen if someone had air-dropped into this who had no knowledge of what e-commerce was or what any of these things were, and what would the impression they take out of this be? And I think we've had very important discussions on behavioral advertising, on terms and conditions, a number of important and relevant issues, areas where there is clearly basis for improvement in clarification, improvement in delivery of information, improvement in lots of areas, and they're relevant, and they're necessary, and they're legitimate things to talk about. But there was a dearth of conversation about the elephant in the room, and that really is the fraud that really permeates, what keeps people away from this medium. And I think we need to make sure that we don't start taking it for granted that we've done a great job there, 'cause as much as the consumer-protection authorities really do excellent work in this space, it is really, really hard to do it well, and there is a need to figure out how to do it better because fraud is still a significant and enduring problem on

the Internet and still must be dealt with. And bad actors and people who get there in the guise of companies, but are there only for fraudulent purposes are things that have to be considered and things that have to be paid attention to. And as we learned from working on the Spam Toolkit in the OECD -- we learned a couple of things. One of them is we've called too many things "toolkits," so we're gonna stop calling things "toolkits" from now on, but, two, it's a team approach because we figured out with spam that it wasn't government by itself. It wasn't law by itself. It wasn't consumers by themselves. It wasn't business by themselves that could address this issue. It had to be multidisciplinary. It had to be cooperative. It had to be a team approach to figure out how to deal with this. And even with the team in place and working together, we're still having trouble with that issue. The issues of fraud, the issues of intentional deception -- they are still the same issues, and they need the same approach because the single-player approach on this issue won't work. So I think perhaps the visitor from another planet who might have sat in the session might have thought things in that space are going a little better 'cause we spent very little time talking about those issues. I think we also have to think of this as an ecosystem. Too often, we are now specialists in one dimension. Someone comes up -- Yeah, he was laughing 'cause I've used the word "ecosystem" again. [Laughter] It's kind of my trademark. Yeah. Hugh and Andy are tired of hearing me use the word. I could go back to talking about a gap analysis in the matrix if that makes you happier. [Laughter] But the -- Yeah, but the concept is, too often, we're a specialist. So, we look at the privacy issue. We look at the security issue. We look at the consumer-protection issue. We look at how wonderful growth is on the Internet. We look at how it can create employment. We look at the issue that we know best. When we look at the issue we know best, we sacrifice the other issues in an improper way and we end up having a balancing of interest instead of an optimizing of interests, and that is, again, not the appropriate approach. We have to have a considered approach where we understand the impacts of our actions on those other disciplines. So if there's a great new business model, what is the impact on the consumer? What is the impact on privacy? How is it secured? If there's a new consumer-protection idea, does it unduly impinge on growth and benefit because we could have done it in a more practical way? We have to start thinking about what happens in that broader area than just our specific area of expertise. When we also look at the new realities in technologies, we also have to figure out the implications of the fact that these are broader than one jurisdiction, yet we have to realize that we live in a world in which laws are made at the nation level and laws have to be respected at the

national level. So what mechanisms can we put in place to assist in looking at those things at a transnational level without compromising the authority of the national group that has made the law or their ability to enforce it? But we have to start considering some of the transnational issues related to that. When we also look at this combination, sometimes we jump to the conclusion that these are issues that somehow are unique to electronic commerce. So when we look at terms and conditions, it seems like electronic commerce has developed this concept of unfair terms and conditions. And perhaps I'm the only one who's rented a car recently or lost a bag, but if anyone's read that contract, I would say that a privacy policy is pretty easy compared to that because it's -- three pages of microtype on the back of my Hertz agreement is not the most wonderful thing in the world to look at. So I think those issues are common issues, and in some cases, the issues of concerns about what you can do with music are really a discussion of the concerns that there are more effective ways to enforce those terms than there were in the offline world because what's shrink-wrapped in with the CD looks a lot like what comes online, too, sometimes. So I just want to make sure that we don't get confused with the fact that we might be annoyed with the term and condition, versus whether it's an electronic term and condition. Lastly, I think, when we look at these from an OECD perspective, we have to think about the fact that the OECD is an organization with multiple committees and multiple jurisdictions, and we've had some very wide-ranging conversations here. And so I think, as we go back, we have to understand what part of this work is the work of the Consumer Policy Committee, which work is the work of the ICCP, which work is the area of joint work because, as the OECD looks at this, we have to figure out how to compartmentalize and where it works within the secretariat, especially since Andy apparently has to have budget for six new head count in order to do all the projects that he's been given during this one meeting alone. The last thing I will say is two responsive comments and the summaries that we were given. On the C2C, I think that Pippa highlighted a very important point on the issue of having to figure out new roles that people are playing and how to account for those roles and how to understand what are the appropriate responsibilities related to those roles. As far as the content, I did want to say there was kind of a direct linkage between DRM and the concept of interoperability, and interoperability is an aspect that may be covered in DRM, but they're not the same thing, and you have to be careful about equating them as the same because interoperability could also be that I can't take an 8-track tape -- and now I'm indicating how old I am -- and play it in a CD player. That's an interoperability issue, but that has nothing to do with DRM. So

interoperability is an issue that is not coexistent with DRM, and we have to just make sure to not define them as the same thing because they're not. And with that, I'll try to allow us to get out of time so people can get planes. [Applause]

>> Michael Jenkin: Well, thank you very much. Joe, that was a very succinct summary. And next is Graham Branton, who will discuss the government perspective -- the national government perspective.

>> Graham Branton: Thank you. Throughout the agenda, I've been trying to think about all of the discussions from two perspectives. The first is the context for deliberations that are going on in my own country about how we organize, how we regulate, and how we enforce in relation to e-commerce, and, also, the input that we're gonna have into the discussions at the European Union level. And at the same time, I've also been thinking about the OECD and what role the OECD can have in the wider international context. And I think, increasingly, it falls on people who work in government to have to think on several planes, and this is a clear example of an area where that's essential. There isn't anything more international than e-commerce, so this area, above all others, probably calls for an international response. So I've been reflecting on that during the last three days. I've also been reflecting on the fact that confidence is key -- consumer confidence is key. Without it, the businesses will not make the money they want to make. So it's key for the businesses to have consumer confidence. The whole thing depends on that. So consumer protection in relation to e-commerce is really at the heart of the whole project, and everything to do with e-commerce, in a sense, is wrapped up with consumer protection. So what do we need to create the confidence to make e-commerce and especially e-commerce across borders really flourish? And I don't -- I haven't heard anybody saying that we shouldn't try to make it flourish and grow as fast as possible because of the increase in choice that it offers. What we clearly need are a regulatory environment. Commerce works best in a fair, regulated market. Those who call for government to get out of the way and business works best when left to itself neglect the fact that, actually, business works best in markets which have a structure of law which is enforced. And we need a structure of law which is enforced in order to make the e-commerce world work properly. And it has to be strong enough to make sure that trading is fair and to protect the legitimate traders, but not intrusive enough to slow down business and, especially, deter innovation. So, how do we

get that right? And there are huge risks here because there is so much money in play, and there's a massive asymmetry of information in many cases between the consumer and the supplier. In some ways, the Internet reduces asymmetries of information by making more information available, but in other ways, the abundance of information itself defeats the consumer's capacity to absorb it. So what are the -- How do we try to cut down on the risks? And I see the risks as being abundant, that, because there's so much money to be made, that consumers don't get the information that they need and that information masquerades as being impartial when, in fact, it's partial or it's deliberately obtuse so that consumers get themselves into things that they don't understand and so on and so on. Consumer confidence, to my mind, requires the information to be believable and the offer to be clear and the information believable. And for that to be right, you've got to understand the difference between what is an advertisement and what a trader is saying and what information comes from somebody else. People are naturally skeptical about the statements of those who are trying to sell them something. But if they think the information comes from somebody else, then they tend to believe it. And we've got to be very careful to keep those two things absolutely separate. And that's at the heart of a lot of consumer protection -- impartial advice. Payment protection -- absolutely key. Clamping down on fraud -- couldn't agree more, absolutely vital, got to be the main priority of our enforcement agencies. And data privacy and security -- important, as well. Transparency on what consumer rights are and clarity of them, and of course, we need cross-border cooperation to deliver all of this in a cross-border world. Above all, I guess, to sum up, I think we need to have the consumer at the center. I was having a little flight of fancy that, if the guidelines were being re-written, they could start off something like -- since I was looking at the flag that was behind the lectern over there -- that, "We believe these consumer rights to be self-evident." [Laughter] Yeah. But we don't have to copy exactly. But that we would say something like, "The right to a clear offer, the right to fair marketing, the right to safety, the right to protection of payments, privacy, and so on." And we could go on. We could all add to those things, but just to give you a sense of having the consumer at the center of what they can expect, and that, if we can get some sort of clarity or maybe even a little bit of vision -- I know we don't do that much in the OECD, but a little bit of vision -- at the heart of the guidelines, then I think that would help create the confidence that is what I see being the key to improving the guidelines and making them fit for the next 10 years. Thank you. [Applause]

>> Michael Jenkin: Well, thanks for that, Graham. That was really quite interesting and broadly based, too -- a lot of food for thought there. Last but not least, for the international organization perspective, our own Andy Wyckoff.

>> Andrew Wyckoff: Yeah. Thank you, Chairman. And some of you will notice I have not attended every session of this conference. That's because I had to go finish off those two small projects Mr. Gurría gave me at the beginning, and I'm glad I did because it looks like we've picked up some other work here. And actually, this is a really good sign that the OECD and other international organizations have an important role to play, and I'm really happy to hear that. I found it to be a very rich and productive three days, and you can see that in this last panel with just this firehose of ideas and projects coming forward. I guess the good news is that there's a lot of work already in train. And I want to outline this a little bit because, as Joe was referring to, the OECD is a large organization, and there are other international organizations. I think -- So what the challenge is, and Joe already kind of pointed to it, is weaving this together to get what he was calling -- what I would call in OECD-speak -- more of a horizontal perspective on some of these issues. So let me just briefly outline these, and I won't go into any great detail 'cause you've heard about them a couple times over the last couple of days. But it all starts with measurement. Whenever you hear me talk, I usually start with that. And it's very important because this gives you a sense of scale and importance and it gives you a bit of a reality check on exactly what is observable and what's not, and it gives you an evidence base, so you can begin to move towards issues that are truly of a higher priority, versus others. Measuring this area is treacherously hard. We've been doing it for over a decade. We still have a lot of work to go on, particularly if you're gonna move to consumer to consumer, 'cause that's not something our fiscal agencies look at normally. And there, if we were to head in that direction, we would really need the help of businesses that operate in this space, the intermediaries. That takes me to a study that we launched out of the Seoul Ministerial, which was in June of 2008, which was on Internet intermediaries. We actually got a ministerial mandate to do this work. And they were prescient, I think, in seeing this as an important area to achieve public-policy goals. And that's been echoed time and again over the last three days. And I think this is a study that needs to have interaction beyond just the ICCP committee. You've heard about it here in the Committee on Consumer Policy. There are other committees at the OECD that are very interested in the study, as well, and last but not least, the tax

group, which is always interested in this. We've heard a lot about privacy in our guidelines -- I think with some good reason in that area are being assessed to see if they, too, should be reviewed. I think it's very good that these two guidelines move in parallel because, obviously, there's lots of interlinkages between the two of them. We have work under way already on a protection of children, and we've heard that several times over the last couple of days. And I just want to end with -- and I regret that maybe not all of you were able to hear John Donahue -- Donahoe. Donahoe -- Sorry.

>> Male Speaker: Donahoe.

>> Andrew Wyckoff: It's important to remember about growth and jobs, particularly as this country approaches 10% unemployment -- it's not the only one across the OECD that's hitting that. This is a very innovative area and one that has generated a lot of wealth and a lot of jobs, and I have to believe the way the economy is changing that this is gonna be accelerated through the crisis and coming out of it. And so I think we need to keep that in mind 'cause there's a "E" in the "OECD." And ultimately, that's what we all want is growth. Let me just end by saying I'm thrilled that there are what we would call "nonmembers" here, other countries beyond the current OECD membership because that's where a lot of this growth is occurring -- China, Chinese Taipei, Egypt, Israel, and Chile. And we need to keep this dialogue going and bring them in as we discuss the revision of these guidelines, and we can do this through partners with other international organizations -- and that's how I'll end -- such as European Commission and the EU, certainly, but, also UNCTAD and UNCITRAL, other U.N. bodies, we're already coordinating with, but maybe we need to strengthen the links here so that they can help us leverage this work and take it out to a broader community. Let me end there and just say thank you for your confidence and for your good ideas, and I look forward to how the chair and his committee are gonna take this work forward. [Laughter] [Applause]

>> Michael Jenkin: You know a good boss when he knows how to hand off tasks. [Laughter] Well, this has been a long three days, but a very, I think, fruitful one. I just want to say a few words about what happens next and where we go from here. But before I do that, I just wanted to add one comment to what we've heard on the panel today. And I mentioned that I chaired the

working group that -- or the latter part of that working group, anyway, that did the original '99 guidelines, and I remember one of the big debates at that time was whether we really needed to have much leadership or rules in this area, that, perhaps, you know, the Internet was a self-governing, self-managing enterprise and one that worked best when people left it alone. [Laughing] I can't help reflecting on those debates now and looking at the kinds of issues that we've been discussing today and the kind of views we've heard, even from the business community, to indicate that, yes, indeed, this is a wonderful, inventive, innovative, growing, productive enterprise, but it's one that's in need of continuous management and care by all of us -- and by that, I don't mean just governments -- and that it needs rules, and it needs mechanisms for cooperation, and it needs governance, and it needs the ability to enforce rules to function well and to benefit everybody -- not just consumers, but the businesses that participate in it and, indeed, to allow those of us who also have responsibility for -- to our publics for the institutions that are in our society to be able to be accountable, as well. And in fact, I think the huge -- the huge challenge we face today is, in fact, how do we do this well? By combining all of our resources, in terms of our knowledge, in terms of our skill sets and competences, in terms of our access to other groups, and in terms of the mechanisms and tools that we have at our disposal to be able to provide the kind of management, oversight, and accountability that's a hallmark of a well-managed institution, that's the responsibility of consumers, business, governments, and international organizations. And I think, you know, the challenge we have today is to figure out how, in fact, we can work together to best manage this enterprise in a way that brings benefits to us all. And I think, you know, we've heard a lot in the last three or four -- three days about the issues that are emerging and the challenges we face in managing those issues productively together. And the committee has got a tiger by the tail here, I think. For those of us -- and not necessarily many of us, but perhaps those of us who thought this was a tweaking exercise, I think we've had a little bit of an enlightenment exercise there ourselves. This is -- We are going to have to look and carefully think about much of the information and views and considered opinions that we've received from the stakeholders in the last three days, and that was primarily why we held this. We were looking to get input from other people, as well, about what's important, what's not known, what we need to work on, and where we need to focus our efforts and attention. We are going to be doing the following things in the next few months. I mean, immediately, we're going to, obviously, put up the material that we've received in the last few days, the presentations and so forth, on the Website. There's a very good

conference Website. We're gonna be producing by mid-next year an analytical report, which will take in some of the input we've received today, some -- the analytical work that we will be doing in the secretariat and elsewhere to put together a good, as it were, issues statement and to pull together a lot of the data and information that we feel is relevant to this particular exercise. And then the committee, the Consumer Policy Committee, is going to have some hard work ahead of it over the course of the next year, looking at that analytical report and deciding where and how and what parts of the guidelines it's going to modify, change, elaborate, and so forth. We've had a lot of very good input in the last few days. I think that's gonna be a tremendous help to us in that regard. And then, of course, we'll proceed with the revision process itself, which will carry on to the following year and -- goodness knows -- may take more than a year or two to bring to ground. After all, the '99 guidelines were a couple of years at least in the preparation. So that's our game plan. We'll be keeping in touch with you and through the Web, as well -- to the people that participated with us over the last few days, as well. And we'll make sure that, as best as we can, we are as transparent and activist in informing you about what we're doing as we can. And I guess I would be remiss if I didn't also say a big "thank you" to a lot of people who worked to make this event a reality. I -- You know I think a lot of you, that an exercise such as this takes a contribution of many groups, many individuals, and a lot of hard work and dedication, and a lot of it in the last few months, in particular, when we meet the crunch of deadlines. But I did want to take this opportunity, in particular, to thank the Federal Trade Commission and its staff for providing the venue, but, more importantly, providing the help of individuals to organize the event and make it a reality and, in particular, Stacy Feuer from the FTC and her team, who have been directly responsible, particularly in the last few days, but in the months previously, in getting this process under way. Hugh Stephenson, as well. And the Consumers and Business Education Division -- Sally Blatts de Levage and Parrish Bergquist, as well, I'd like to thank for their hard efforts. I'd like to thank Japan for the funding that they gave for this exercise, which helped to make it a possibility, the Canadian Embassy for hosting us for lunch, BIAC and the USCIB, Joe, in fact -- as well, Nicole Primmer. Chris Martin and Heather Shaw for the work that they did in the work that they did in helping to get the funding for many of our events, but, also, their contribution to helping us organize this exercise. And not the least, our own OECD team -- in particular, Peter Avery and Brigitte Acoca, in particular, for organizing the event and Brigitte, in particular, for her efforts in authoring the background report and the organizing of the conference itself. Ewelina Marek and Yuko Ueno and

Magda Olczak-Rancitelli, as well. Olga's back in Paris manning the fort. [Laughs] All of these people put in many long hours making sure that this event came off, and I really deeply am grateful to them for all of their work. To our moderators and panelists and participants today, also, a "thank you." These events never get off the ground without the people who come here and make the contribution and turn them into living, real opportunities, and I thank you greatly for all of that. So, with that, I'd like to say, again, and to the participants on the Web, as well, a "thank you" for your engagement. It's critical, and we've reached many more people than just the people in this room over the last three days in that regard. I'd like to thank our translators, who have borne with us and given us excellent service. Again, we vitally depended on them on many occasions in the course of the last three days, and thank you again for that. I have one other thing I need to say, and that is Spain would like to make a brief announcement about a forthcoming event that's of relevance to us all. So, thank you, everyone, for attending, and I'll invite Spain to take the microphone for a brief announcement. Thank you. [Applause]

>> Female Speaker: So, thanks a lot. Thank you, Michael, for giving me the opportunity, as, well, most of you already know. Spain will host the presidency of the European Union. This is our turn at the presidency, and we begin the 1st January. And as here, there are a lot of Europeans, there are a lot of non-Europeans and a lot of people related to consumer protection, I would like to announce you two of the main events that will take place related to consumer protection during our presidency. The first we will hold together with another, let's say, authorities, and will take place on the 11th of May, together with the competition authorities -- competition and consumer-protection authorities to together, 11th of May in Madrid. And the second one that will be a really big event related to the safety-product control that will be held in Majorca on the Balearic Islands during 10th and 11th of June. We will appreciate, of course, the presence of our European colleagues, but we welcome you if you want to join us. So see you in Madrid or in Majorca. Thank you. [Applause]

>> Michael Jenkin: And thank you, everybody, once again, for attending. The conference is over.