

***Japanese and Asian Challenges
for Safe and Worry Free
E-commerce Transactions***

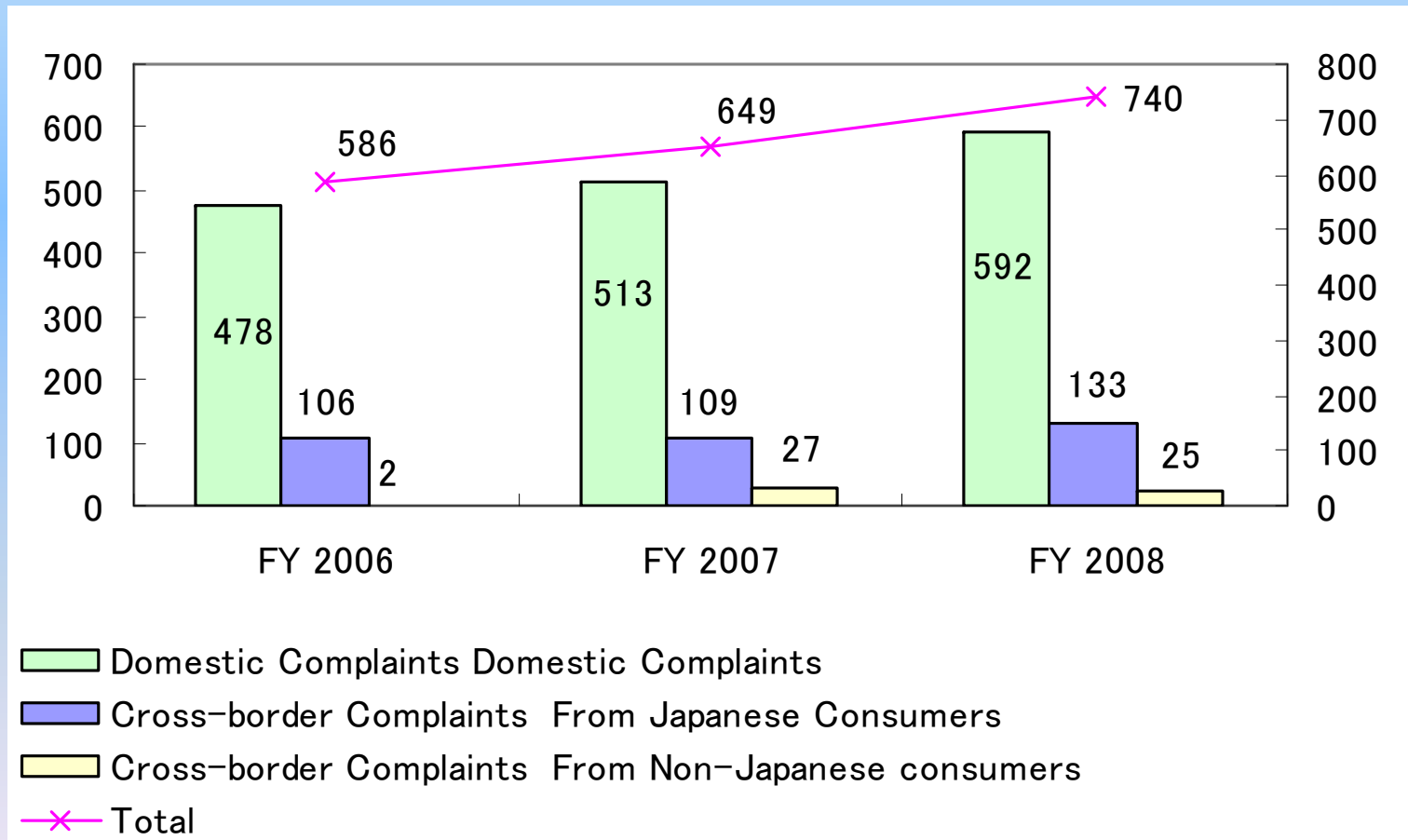
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Professor of Law
Rikkyo University
Japan***

Japanese and Asian Challenges

1. Outline of Consumer Complaints in Japan
2. Japanese Challenges
 - Interpretive Guidelines on E-commerce-
3. Asian Challenges
 - The ICA-Net Project in ERIA-

Outline of Consumer Complaints (1)

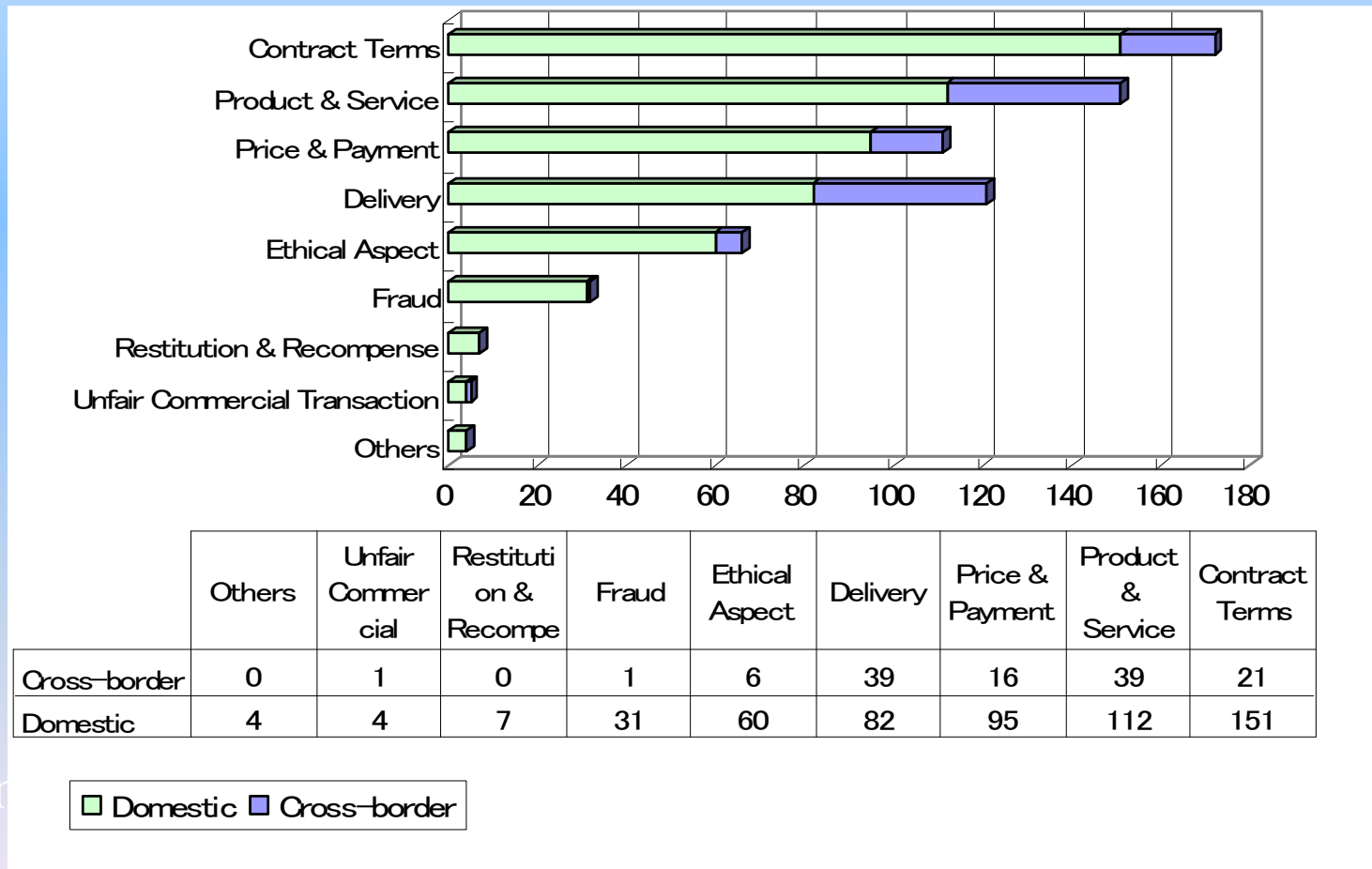
Complaints from Consumers to “EC-Network” in Japan



Outline of Consumer Complaints (2)

breakdown by nature of complaint

Consumer Complaints about goods FY2008

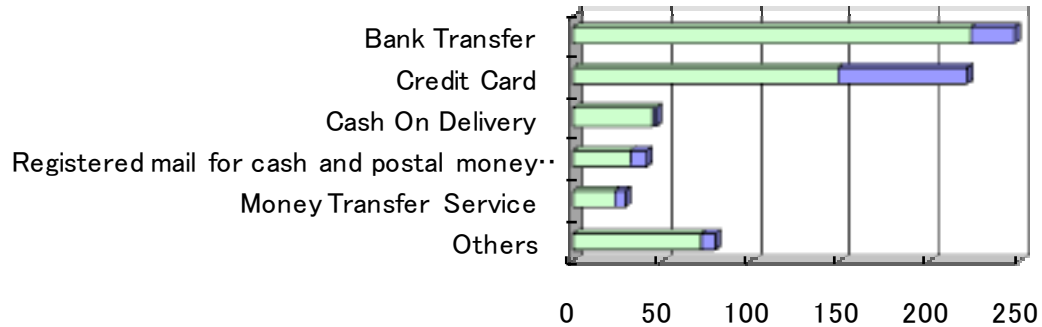


Dom

Outline of Consumer Complaints (3)

breakdown by the means of settlement

FY2008



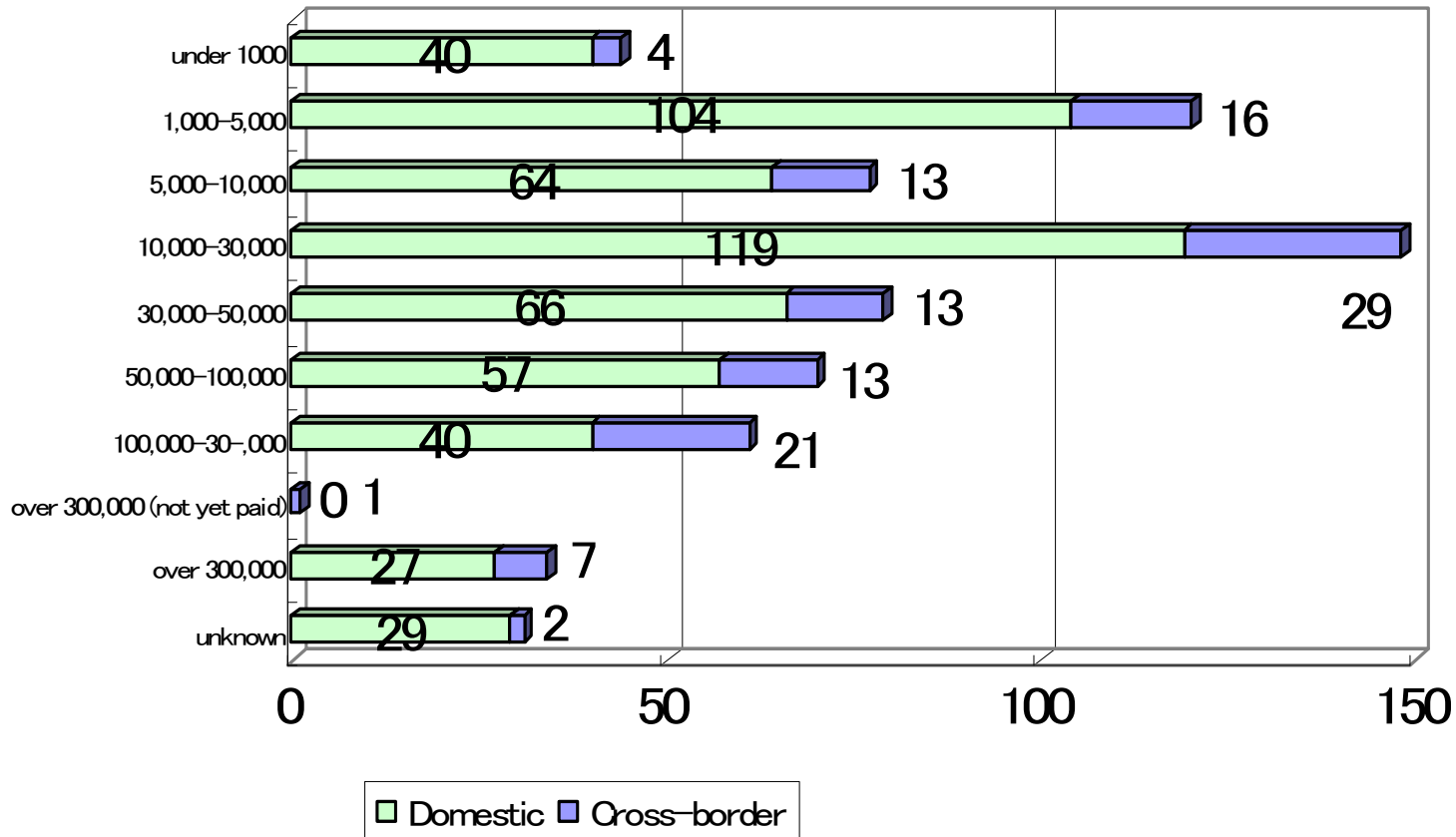
	Others	Money Transfer Service	Registered mail for cash and postal money transfers	Cash On Delivery	Credit Card	Bank Transfer
□ Domestic	72	24	33	46	149	222
■ Cross-border	8	6	9	0	71	25

□ Domestic ■ Cross-border

Outline of Consumer Complaints (4)

breakdown by amount of money involved

FY2008

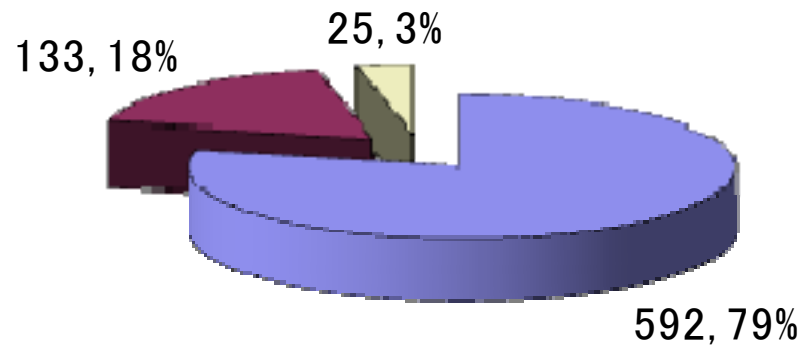


Yen (1USD = 119yen) end of FY2008

Outline of Consumer Complaints (5)

breakdown by country of trading partners

Breakdown by the type of complaints (FY2008)

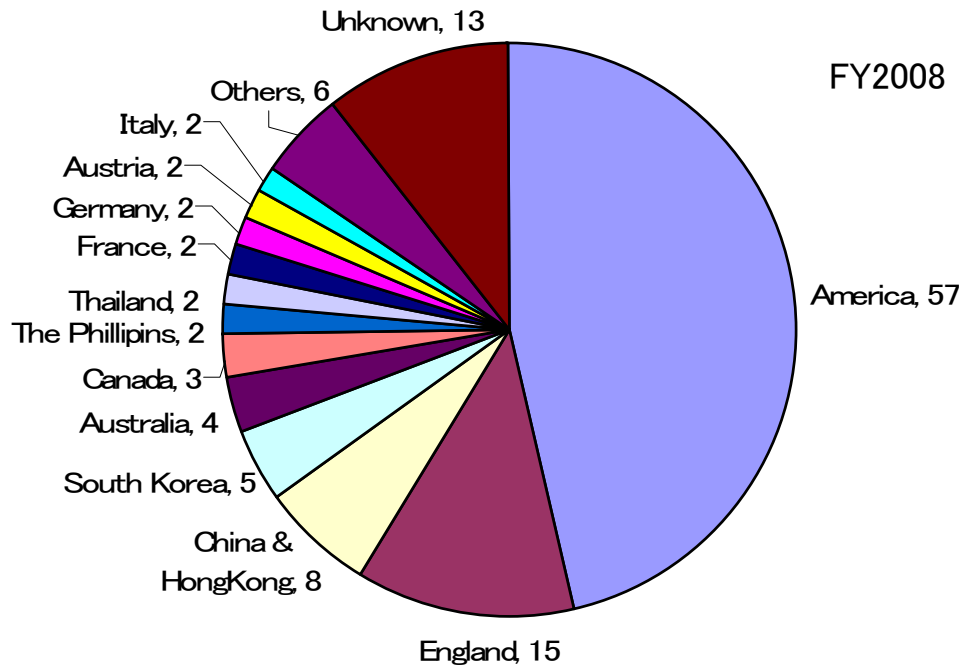


Total 740 cases

- Domestic Complaints from Consumers in Japan
- Cross-border Complaints from Japanese Consumers
- Cross-border Complaints from Non-Japanese Consumers

Outline of Consumer Complaints (6)

breakdown by country of trading partners



	FY 2006	FY 2007	FY 2008
North America	43	63	65
Asia	25	18	22
Europe	15	10	29
others	23	18	18

Japanese and Asian Challenges
-Interpretative Guidelines on E-commerce-

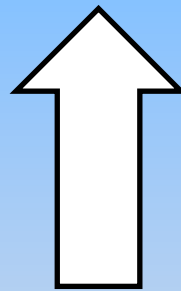
“Interpretative Guidelines on E-commerce”

annually issued

for Japanese E- Commerce Venders and Consumers
conducted by

Ministry of Economy, Trade and Industry (METI)

***Many unclear issues
in interpretation of current laws and regulations
on various brand-new e-commerce transactions.***



Interpretative Guidelines on E-commerce

What Are the “Interpretative Guidelines on E-commerce”?

- **Comprehensive guidelines for interpretation of existing laws relating to e-commerce transactions.**
- **No binding effect for judicial courts. But expected that they would respect the interpretation.**

Advantages:

- Speedy response to business needs
- Transparent and fair procedures
- Many experts involved in rule making process

Making Process of Interpretative Guideline

Sampling of Unclear Issues on Current Laws



Interpretation examined by Expert Committee



Reported by METI



Public Opinions, Judicial Decisions and Reports in ADR



Feedback for
Revise Process

Three Principles for making “Guidelines”

①

Everyone can participate

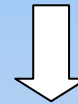
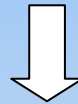
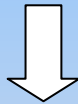
②

Large diversity and fast change

③

Border-less market formation

3 characteristics of e-commerce



3 principles for healthy market formation

Building up such environment

**Not Prior Regulation
But follow up check**

Rules with Int'l Consistency

List of Items of the “Interpretative Guidelines of Electronic Commerce”

A: Online trade (rules of online environments such as trade on the Internet)

1. Issues Concerning Contract Procedures

Time of contract establishment
Legal effect of pretence
Responsibility of authentication agencies
Indication of intention by minors
Jurisdiction agreement

2. Issues Arising from New Trade

Responsibility of the manager who runs a cyber mall
Internet auction
Events offering prizes on the Internet

3. Protection of Consumers

Error caused by input mistakes
Window to buy a commodity on the Internet
Appropriate indication of advertisements on webs

B: Information Trade (rules for trading programs and digital contents)

1. License Agreement

Date of contract establishment and whether or not to return the commodity purchased
No provision of important matters
Unfair provisions of a contract
Obligation to restore the original state
Means of technical restrictions
Bearing responsibility for a program
Counter by a third party

2. Intellectual Property

PtoP file conversion software service
Domain name
Indication of commodity information and violation of the commodity right
ID and password, etc.
Information taken out of a database

Specific Examples of Contents in the “Guidelines” (Online Trade)

1. When is an electronic contract established in the case of using e-mails?
When is an electronic contract established on a web display?
2. In the case of spoofing by abusing someone's ID, password, and credit card number, can he or she reject payments?
3. If a third party spoofs to register electronic signature and perform a transaction and causes damage to a dealer, can the dealer pursue any responsibility of certification authority which has issued the electric certificate?
4. If an underage person purchases a product over the Internet, in what case can he or she cancel the order and reject the payment?
5. If a product which has been purchased from a shop in a cybermall has a defect, can the damage be compensated to the operator of the cybermall?
6. If trouble occurs, for example, if an ordered commodity is not delivered to the buyer or if the buyer does not pay for the commodity delivered, can the losing party take measures against the auction operator on the Internet?
7. If the commodity delivered after being obtained through a successful bid in an auction on the Internet is different than the information given, can the successful bidder seek the responsibility of the exhibitor of the commodity?
8. When an individual is going to sell a commodity in an auction on the Internet, what is required to indicate the commodity information?
9. Is a prize offering event on a homepage on the Internet subject to the Act against Unjustifiable Premiums and Misleading Representations?
10. If a wrong operation on the Web screen makes unintended purchase order, can invalidity be claimed?

Specific Examples of Contents in the "Guidelines" (Information Trade)

11. Under what concrete conditions and when is license agreement of package software made? Under what conditions can the software be returned?
12. If a program purchased has a bug and an error occurs during operation, what responsibility of the manufacturer can be pursued.
13. The license agreement has a clause that the manufacturer has no responsibility for a bug. Is this clause valid? And how about the clause which shortens the period in which a manufacturer is responsible for a bug.
14. If a user exchanges files over the Internet by using file exchange software, does this mean that the user infringes copyright?
15. Does PtoP file conversion service violate the Copyright Law?
16. Does exhibiting a brand item in an auction on the Internet or offering a brand item for sale on a bulletin board on the Internet violate the trademark right of the brand?
17. Is it allowed to disclose an ID or password or the like on the Internet to facilitate access or copy (installation) of digital contents and programs?
18. Is it allowed to transfer to a third party data on a database provided online on the Internet or a CD-ROM or other packages?

*Japanese and Asian Challenges
-Interpretative Guidelines on E-Commerce-*

“Interpretative Guidelines on E-Commerce”

A full text can be downloaded from

http://www.meti.go.jp/english/policy/index_information_policy.html

Asian Challenges

-The ICA-Net Project in ERIA-

“ERIA”



Economic Research Institute for ASEAN and East Asia

<http://eria.org/>

“The ICA-Net Project”

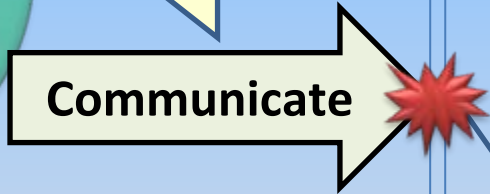
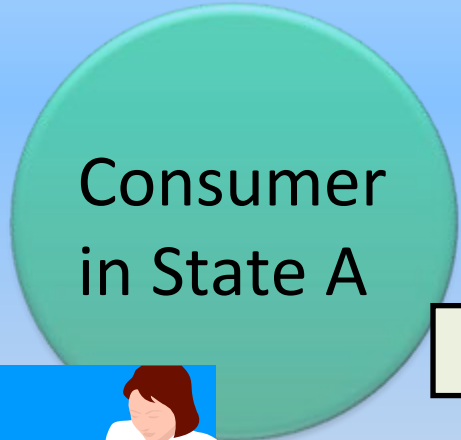


International Consumer Advisory Network

Language Problems

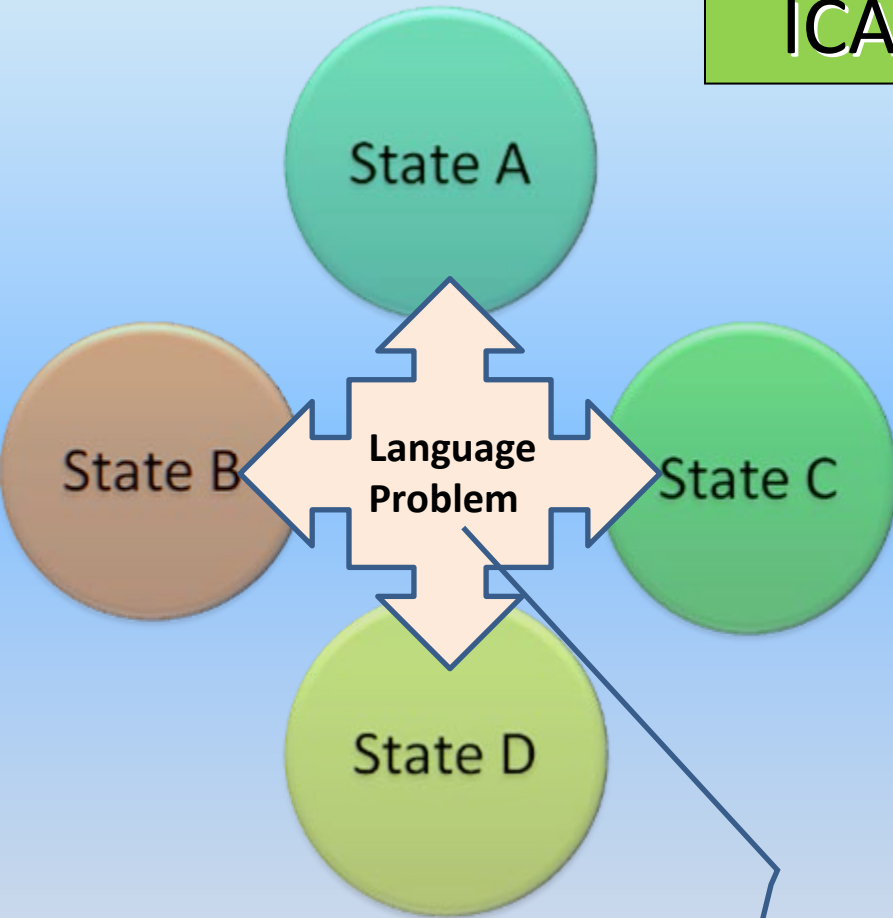
State B

State A

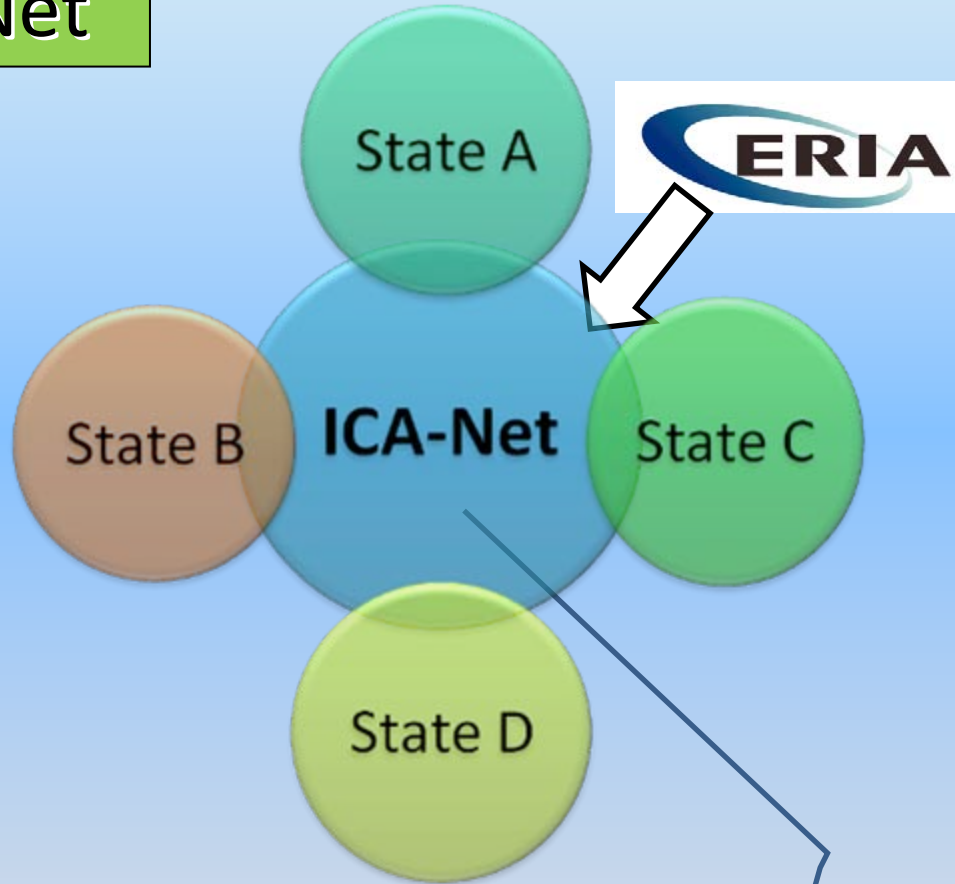


Consumers in State A cannot communicate with Venders in State B **due to Language**

ICA-Net



Consumers in State A cannot communicate with Venders in State B **due to Language**

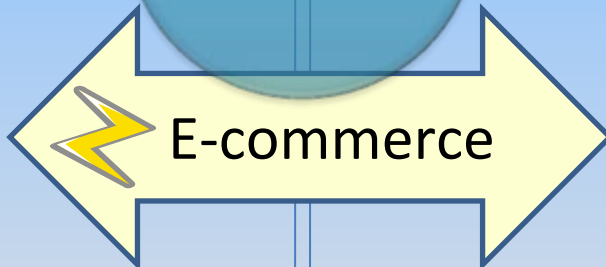


Consumers in State A can communicate with Venders in State B **assisted by ICA-Net**, which is **powered by ERIA**

State X

Border

State Y



State X

Border

State Y

Consumer Advisory
Liaison Office

Consumer Advisory
Liaison Office

ICA-
Net

Consumer

E-commerce

Vender

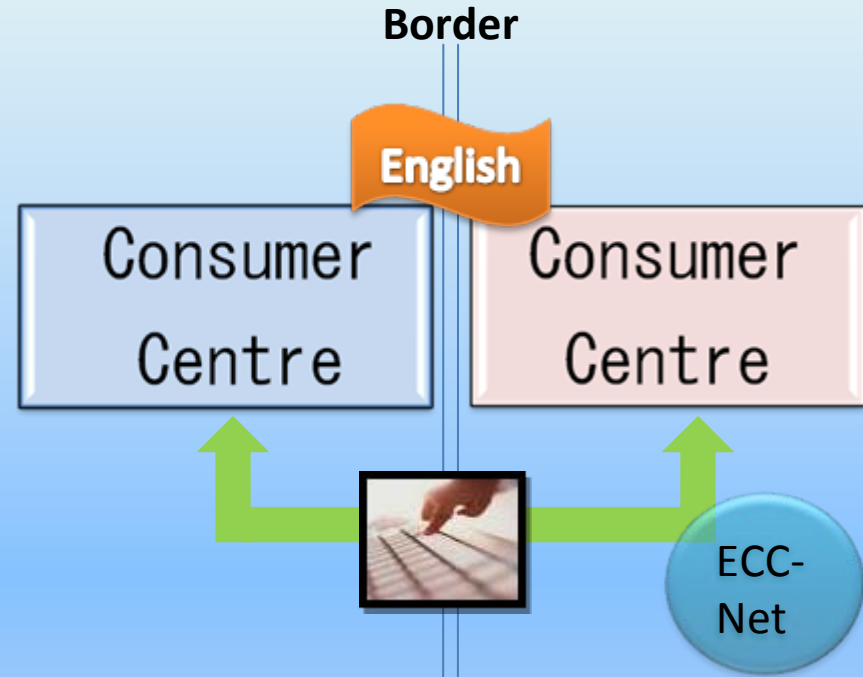
Language
X

English

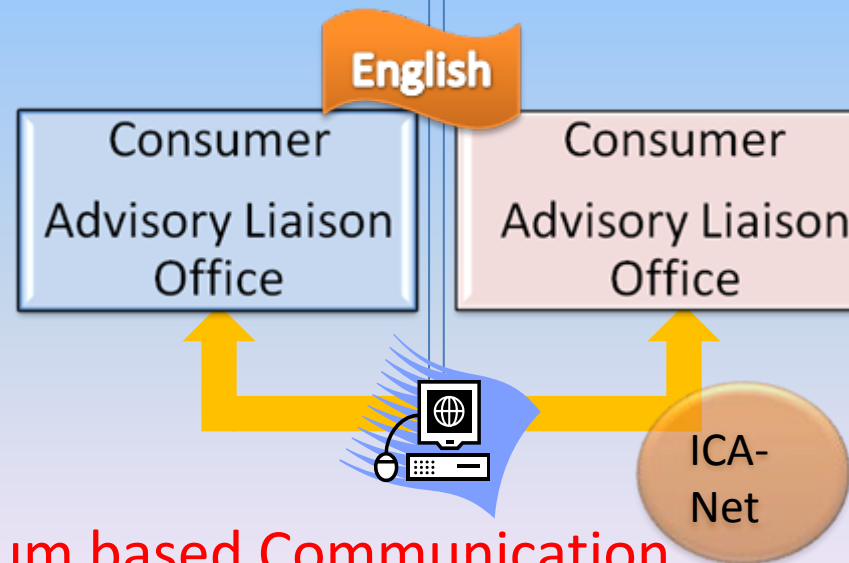
Language
Y

Inspired by the ECC-Net in EU

Consumer Claims by E-mail or Phone



Consumer Claims by E-mail or Phone



ODR Forum based Communication between CALOs internationally

Development of ICA-Net

- 2007.11
GBDe/CCIG proposed a creation of ICA-Net at the 9th Summit in Tokyo
- *Ms. Pamela J. Harbour, a Commissioner of FTC, expressed her support for this initiative*
- 2008.11
Consumers International (CI) expressed support at the 10th Summit of GBDe in San Francisco
- 2008.12
ICA-Net was discussed at ERIA WG, “Establishment of a secure and safe e-commerce marketplace”
- 2009.01
Started ICA-Net Pilot Project in cooperation with ERIA
- 2009.06
- Attended the International ODR Forum Discussion and shared information with pundits, researchers and other practitioners
- Will be discussed at ERIA WG again this year and publish a recommendation to ASEAN and East Asian countries.

The Currently Participating Members (CALOs)

Singapore: Consumers Association of Singapore (CASE)

Malaysia: National Consumer Complaint Centre (NCCC)

Thailand: Department of Business Development (DBD)

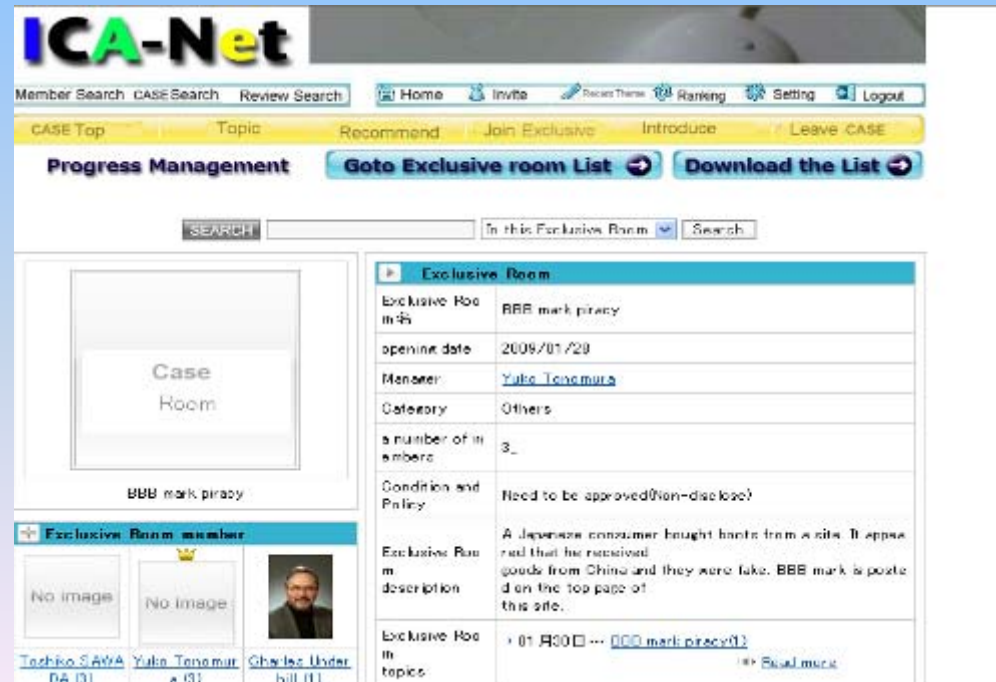
Vietnam: Vietnam E-commerce and IT Agency (VECITA)

Taiwan: Secure Online Shopping Association (SOSA)

US & Canada: BBB

Japan: EC Network

Consumers International (CI)



The screenshot displays the ICA-Net website interface. At the top, there is a navigation bar with links for Member Search, CASE Search, Review Search, Home, Invite, Recent Topics, Ranking, Setting, and Logout. Below this is a secondary navigation bar with links for CASE Top, Topic, Recommend, Join Exclusive, Introduce, and Leave CASE. A main navigation bar includes 'Progress Management' and buttons for 'Goto Exclusive room List' and 'Download the List'. A search bar is located below the navigation bars.

The main content area features a 'Case Room' placeholder on the left and an 'Exclusive Room' details panel on the right. The 'Exclusive Room' panel contains the following information:

Exclusive Room	
Exclusive Room title	BBB mark piracy
opening date	2009/01/28
Manager	Yuko Tanemura
Category	Others
a number of members	3
Condition and Policy	Need to be approved (non-disclose)
Exclusive Room description	A Japanese consumer brought back from a site. It appeared that he received goods from China and they were fake. BBB mark is posted on the top page of this site.
Exclusive Room topics	01月30日 ... BBB mark piracy(1) Read more

Below the 'Exclusive Room' panel, there is a section for 'Exclusive Room member' showing three members: Toshiro SAWA (DA (3)), Yuko Tanemura (a (3)), and Charles Underhill (1).

Handled Six Cross-border Cases

Case 1: Misuse of BBB Trustmark

- A Japanese consumer received fake UGG Australia boots. The site displayed Trustmarks of BBB and TRUSTe without permission.

Case 2: Domain Registration

- Thai consumer filed this complaint over Australian domain name registrar to CI in Kuala Lumpur (KL).

Case 3: Negative Option

- A Japanese consumer had trouble with a Japanese subsidiary of BBB member company in US. EC Network bridged this complaint to HQ and received their response.

Case 4: Fake Escrow Company

- A Japanese seller on eBay fell victim of a fraud.
- EC Network requested for eBay an investigation, the disputed site was shut down after eBay alerted the Registrar/ISP

Case 5: Not delivered after payment

- CI in KL received a complaint from a Taiwanese consumer who purchased goods from a motorcycle dealer in the UK. The consumer lost contact with the business. SOSA (Taiwan) will support the consumer and is looking for a contact in UK.

Case 6: Not delivered goods from Japan

- Forum des droits sur l'internet, a complaint handling organization regarding IT and e-commerce in France, sent a complaint from a French consumer who has not received goods from an auction agent in Japan to EC Network. After EC Network's investigation, it was discovered the agent had already run away.

Case 1: Misuse of BBB Trustmark

- **Consumer: Japan**
- **Business location: China**
- **CALO involved: EC Network (Japan)**

- **Summary:**
 - The consumer bought UGG boots through Paypal and received counterfeit items from China. Although he raised a complaint to Paypal, his case was unaddressed, so he filed a complaint to EC Network.
 - EC Network found the business was displaying BBB and TRUSTe marks.
 - BBB's legal department sent this business an alert mail to remove its mark. *All Trustmarks were removed next day.*

- **Significance:**

Although we could not bring about a settlement to this consumer, the alert from BBB led to nearly shut down of this business' website.

- **Challenges:**

Lack of information regarding Chinese laws
Necessity of a CALO in China

Case 2: Domain Name Registration

- **Consumer: Thailand**
- **Business location: Australia**
- **CALO involved: EC Network (Japan), CI**
- **Summary:**
 - The consumer complained to CI about Australian domain name registration company about the charge and transfer of his domain name.
 - The company claimed the charge was valid, and he consulted a credit card company. He tried to transfer his domain to other organization, but he could not do so. Because of filing a complaint to the credit card company, he lost his domain name.
 - EC Network consulted with the National Internet Registry in Japan about this case and found that this case should be solved based upon Transfer Dispute Resolution Policy (TDRP) proclaimed by ICANN. EC Network informed CI about (TDRP).
- **Significance:**

EC Network and CI were able to exchange useful information. This case meets one of the purposes of ICA-Net's that CALO provides the most effective means for solving disputes to consumers.

Case 3: Negative Option

- **Consumer: Japan**
- **Business location: Japan, US**
- **CALO involved: EC Network (Japan), BBB (US)**

- **Summary:**
 - The consumer purchased computer software by downloading which had an option to purchase online game. He ended up applying both services without realizing the note written in small print “Users will be charged after a free trial period of 14 days.”
 - He negotiated with the Japanese subsidiary and succeeded in cancellation of the contract of game service. On the other hand, the subsidiary did not accept issuing a refund of one-month subscription fee that he already paid.
 - EC Network filed this dispute the US HQ thorough BBB, the HQ decided to issue him a refund. The consumer is still asking the HQ to improve its subscription method by saying that such methods are deceitful.
 - Japanese subsidiary modified and improved the description of their web pages based on EC Network’s suggestion. However, the issue of “opt-out check box” is still under discussion.

- **Significance:**
 - Thanks to BBB’s operative force, the consumer were able to get a full refund. ICA-Net provided effective remedy in an individual case.
 - Both CALOs were able to share beneficial information and views on negative option marketing. EC Network provided the information about “Act on Specified Commercial Transactions” in which is stipulated mandatory to represent in an easily understood manner and consumer rights of class action lawsuit. Also, BBB provided us FTC’s report on negative option marketing.
 - Through this communication, we came to a common understanding on the importance of taking account of other country’s business practice in cross-border e-commerce.

Case 4: Fake Escrow Company

- **Complainant: Japan**
- **Other party: Spain?**
- **CALO: EC Network (Japan)**
- **Related org: eBay**

- **Summary:**
 - The Japanese woman sold a diamond ring (est. \$3,800) on eBay. The buyer in Spain designated her to use a particular escrow company.
 - After sending the buyer the goods, the seller lost contact with both the buyer and the escrow company.
 - EC Network informed this complainant the escrow company was not the one which eBay designates and was very likely to be a fraud.
 - EC Network contacted an ODR director of eBay. The investigation team of eBay entered this case into Fraud Tracking System, and alerted the Registrar/ISP. Later, this fraudulent website was removed.

- **Significance:**

The disputed site was shut down. Actions by eBay who has direct interest, market power and considerable clout have profound effect when handling cases.

- **Challenges:**

We need close cooperation with law enforcement entities to prevent dispute and the extent of damage for fraudulent cases even if we could not provide redress for victims.

Case 5: Undelivered goods from UK

- **Consumer: Taiwan**
- **Business location: UK**
- **CALO involved: CI Kuala Lumpur office, SOSA (Taiwan) EC Network (Japan),**
- **Related org: CI London office, looking for like-minded org. in the UK**

- **Summary:**
 - A Taiwanese consumer purchased several items from a motorcycle shop in the UK, but the shop has not shipped any items. Even the consumer called and emailed the shop, there was no response.
 - Then, the consumer consulted CI London office. CI London office contacted CI KL office about this complaint.
 - After obtaining consent from this consumer regarding handling personal info in the ICA-Net, CI KL office and SOSA of Taiwan proceeded to handle this case. We expect SOSA to serve as a bridge between the consumer and the UK contact.

- **Significance:**

Global network of consumer associations and ICA-Net are well functioned in a flexible manner.

- **Challenge:**

We need a CALO in the UK.

Case 6: Auction Agent does not deliver goods

- **Consumer: France**
- **Business location: Japan**
- **CALO involved: EC Network (Japan),**
- **Related org: Forum des droits sur l'internet (France), Cabinet Office (Japan)**

- **Summary:**
 - A French consumer won several items at Japan's auction site through an auction agent in Japan. The agent received his payment, but has not shipped any items. The consumer lost contact with the agent.
 - EC Network received this complaint from Forum des droits sur l'internet through Cabinet Office of Japan after the consumer sought consultation with the organization.
 - The phone number was no longer available when EC Network directly called the agent. We also visited the office, but it was vacant and it seems the agent did a moonlight flit.

- **Significance:**

ICA-Net can work for complaints from Europe by sharing information about Japanese law and the questionable company.

- **Challenge:**
 - Cooperation with domestic law enforcement entities.
 - Constant relationship with European organizations

Significance & Challenges

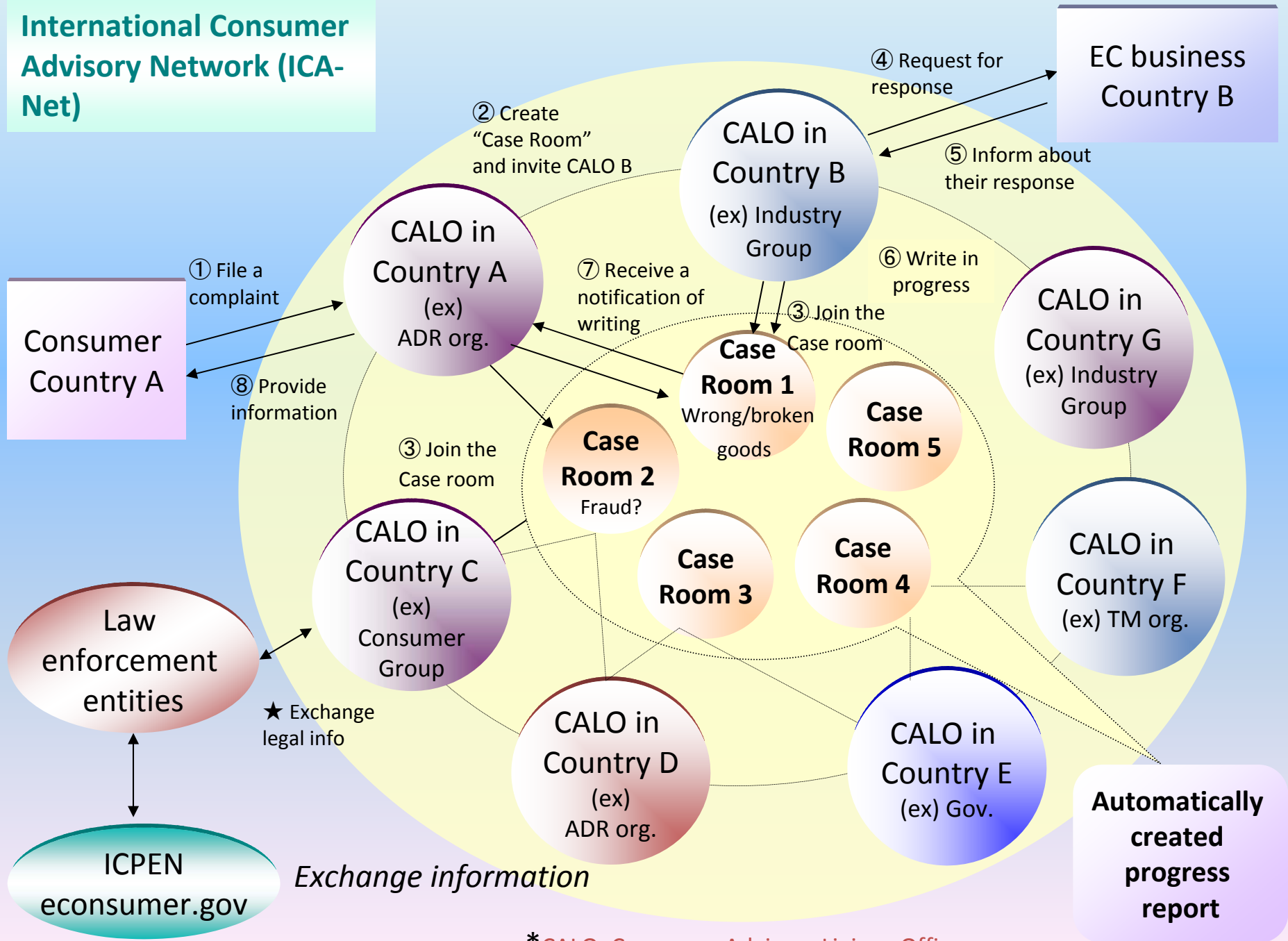
- Significance -

1. Handling individual complaints
2. Information exchange
3. Enforceability and dispute prevention
4. Improvement of business practice

- Challenges -

- Expand the network
- Close cooperation with law enforcement entities especially fraudulent cases

International Consumer Advisory Network (ICANet)



*CALO; Consumer Advisory Liaison Office

Future Plans for 2009

- Continue the trial project while updating our system
- Expansion of Members (CALOs)
China, Korea, the Philippines, Europe
- Exchange the views with US & EU
- Enhance our capability of complaint handling through dealing with actual cases
- Study on establishing effective cooperation with law enforcement entities
- Creation of internal rule among CALOs
 - handling personal info

Thank you!

Please ask more details of the Japanese and Asian Challenge

at

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