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Trusting the Trustmark ?

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Introduction

Many different kinds of trustmarks dwell in Cyberspace. They cover issues ranging from privacy or data protection, consumer protection, e-health standards, senior-friendliness, spiritual guidance etc. Indeed, there are not many similarities between a PriceWaterhouse Betterweb^[1] trustmark for e-commerce and a Diamond Way Buddhism^[2] trustmark for spiritual guidance (here: Karmapa Thaye Dorje), but they are both trustmarks, with the purpose of inspiring trust in the recipient.

Since b2c e-commerce has still not taken off as expected, trustmarks are a method for vying the e-consumers confidence and trust.

Currently we observe a widespread development of e-commerce trustmarks (TM), trust certifications or trustseals. Trustmark organisations (TMOs) award their trustmarks to certain e-vendors for display on their websites. In order to obtain the trustmark, the e-vendor has to comply with the TMO's code of conduct (CoCs), standards, criteria or code of practice.^[3] The trustmark shall inspire more trust in the e-consumer and make him feel confident that the certified e-vendor is trustworthy, law-abiding and efficient.

But in fact, there is a whole flood of various e-commerce TMOs, trustmarks and schemes, which differ considerably from each other. Also the varying CoCs and their relationship with legal provisions pose many questions. With view to consumer protection in e-commerce, a closer examination of the existing TMOs, their potential and the issues connected with trustmarking in general is due and will be given in this paper.

The different e-commerce TM concepts

The field of e-commerce TM consists of a great variety of concepts. Almost every TM bears a distinctive feature. These specific features embody different varieties of CoCs, ADR schemes,

mediation services, insurances or guarantees. In some countries, the miscellaneous TM schemes are given different labels according to their specific characteristics. These labels vary between countries and a mark that is labelled a certificate in one country might be regarded as a TM in another. These regional differences cause no little confusion while comparing the different national TM initiatives.

A lot of TMOs would probably even disapprove of comparisons since they regard their TM concept as being unique and therefore incomparable. However, we have decided to ignore this argument and will only evaluate the TMOs from the e-consumer's perspective.

We use three criteria in order to identify a B2C e-commerce TM:

1. Objective for the TMO: Promotion of a specific interest (such as enhanced consumer protection, increase sales for a specific group of e-vendors or to generate financial profit for the certifying organisation.)
2. Objective for the e-vendor: Increase of his performance (sales).
3. Objective for the e-consumer: To feel confident and secure while conducting e-commerce.

TMs that fulfil these criteria are comparable to each other regardless of the their label. Therefore, we will hereafter disregard any labelling and call them all TM.

The selection/presentation of TMs

In order to illustrate the "fauna and flora" of e-commerce TMs we have chosen to investigate 9 TMOs. The selection was subjective and we have included TMOs that either operate in Scandinavia [4] or have, in our opinion, especially interesting features. Short descriptions of their inner structures and main features will be given below:

1. The Which? WebTrader scheme[5]

The UK consumer's association CA[6] set up the Which?WebTrader scheme in 1999. E-vendors can obtain their trustmark for free and an ADR scheme is in place. The scheme has partnerships with other international consumer groups [7]. The Which?WebTrader's CoC has been approved by TrustUK[8], a British body for online CoC approval.

2. Trustedshops[9]

Trustedshops (since 2000) is a German joint venture between IMPACT Business & Technology GmbH and a spin off from the Gerling Insurance Group. The EU supports Trustedshops[10]. The cost for their seal amount to a minimum of 2550 p.a. They offer a free money-back-guarantee for consumers and an Internet-Compact-Police for the e-vendors. They also act as mediators in disputes between e-vendors and consumer.

3. EBTrust[11]

EBTrust is operated by Det Norske Veritas, which is a leading international provider of services for managing risks. The TM was initially launched in 6 countries, but has the ambition to eventually become a global TM. EBTrust has a somewhat different concept than a usual TM since it uses a business model instead of a CoC. The business model measures effectiveness in the internal flows of the e-vendor and the TM certifies that the e-vendor has the capability to provide adequate Products & Services. The TM has no consumer input or ADR. The cost for the TM and the features in the business model vary in the different regional markets. We have only been in contact with the

Swedish EBTrust representative and the cost for the TM in Sweden is ca. 15.000 .

4. Betterweb[12]

Betterweb is an international TMO, managed by PricewaterhouseCoopers[13]. They offer the TM in 14 countries and their CoC is adapted according to the different regional markets. The CoC examined in this paper is the Swedish version. The annual fee for e-vendors is 15.000 and the price is similar for every region. There is no ADR function.

5. E-Handelsfonden[14]

E-handelsfonden (the e-trade foundation[15]) is a Danish organisation that issuing the TM e-maarket (the e-mark). The organisation consists of a conglomerate of interest groups and governmental agencies, all with a special interest in e-commerce: Dansk data forening (Danish Computer Association), Dansk handel og Servic (Danish Commerce & Services), Dansk industri (Confederation of Danish Industries), Handelskammeret (The Danish Chamber of Commerce), Finansrådet (Danish Bankers Association), Forbrugerrådet (Danish Consumer association), Foreningen for Dansk internethandel (The Danish eBusiness Association), HK (Union of Commercial and Clerical Employees), ITEK (Trade association of IT, telecommunications, electronics and communication enterprises in Denmark), ITK (The IT & Communication Association) and IT branche foreningen (The Danish IT Industry Association). The TM has a licensing fee ranging from 1875 - 6500 DEK and an annual fee of 3750 - 11375 DEK depending on the number of employees of the e-vendor. The TM offers ADR

6. Nsafe[16]

Nsafe is a joint venture between Forbbrukerrådet (Consumer Council of Norway) and an e-commerce interest organisation, E-forum. The TM is priced 10000 Nkr p.a. A certified e-vendor can obtain a price cut of 30% if the TM is used in co-branding with the e-vendors advertising. The Nsafe TM has an ADR function.

7. Labelsite[17]

Labelsite is a French TMO that has been developed and design by FCD (Fédération des Entreprises du Commerce et de la Distribution - Retailers Federation) and FEVAD (Fédération des Entreprises de Vente à Distance - French Distance Selling Federation). Labelsite was launched within the framework of the Conseil National du Commerce (National Trading Council) and the Institut International du Commerce Electronique (International Institute of Electronic Commerce). The fee for initial examination and certification is 500 . Afterwards, the Authentication Committee sets the amount of yearly contribution. There is no ADR function.

8. Gütezeichen

The Gütezeichen[18] seal was developed by the Austrian Chamber of Commerce, the Federal Chamber of Labour, the Ministry of Justice, the Ministry of Commerce and Labour the Association for Consumer Information and the Internet Service Providers Austria in connection with the EU-supported Austrian Internet Ombudsmann project[19]. It is the only Austrian trustmark and obtained a legally required permission to certify by the Ministry of Commerce. Initial certification costs 363-1090 for SMEs and larger e-vendors are charged p.h. after individual contracting. The annual fee is 363 . Gütezeichen offers out-of-court arbitration and consumers can obtain a europe-wide legal dispute insurance from the Internet Ombudsmann for a membership fee of 25,44 p.a.. The insurance is even retroactive for disputes that have arisen prior to the membership of the consumer.[20]

9. Clicksure[21]

Clicksure originates from the UK and is managed by a private company. The initial certification costs 250-500 and the annual fee is 960-1920 . The Clicksure program was developed to comply with the ISO/IEC Guide 62 for bodies operating assessment and certification/registration of quality systems. Furthermore their website is rated by the RSACi[22]. Clicksure offers ADR and has an Advisory Council composed of various representatives and specialists for e-commerce.

Fig. 1: Overview of the examined TMO schemes

TMO	Initiators	E-vendors subscribe to	Dispute Resolution	Insurance	Consumer Influence
Gütezeichen	Government./ Consumer and Business Associations	CoC	Arbitration	Insurance covers the consumers cost for legal representation in case of a dispute	Yes
E-handelsfonden	Government./ Consumer and Business Associations	CoC	ADR		Yes
Nsafe	Government./ Consumer and Business Associations	CoC	ADR		Yes
Which?	Consumer Association	CoC	ADR		Yes
Labelsite	Business Association	CoC			
TrustedShops	Business	CoC	Mediation	Money Back Guarantee for consumers and Internet-Compact-Police for e-vendors	Advisory Board
Clicksure	Business	CoC	ADR		Advisory Council
Betterweb	Business	CoC			
EBTrust	Business	Business Model			

Code of conducts and EC consumer protection regulations

In order to be certified with a TM, an e-vendor has to comply with the CoC of the certifying TMO. The provisions of the CoC state how the vendor must conduct his business and should, in best case, improve the consumer's confidence. Needless to say, the consumer is awarded basic legal protection from consumer protection law and the EU has recently issued new provisions[23] to better suit the new requirements of B2C e-commerce. However, the mere existence of TMs clearly indicates that

the consumer protection provisions are not sufficient to cause the consumer considering e-commerce as reliable as conventional commerce.

The purpose of a TM is to fill this confidence gap and the natural assumption would be that a CoC ought to increase consumer rights in order to turn conventional consumers into e-consumers. However, it is doubtful whether consumer rights are improved in existent CoCs and the relation between consumer protection afforded by either legislation or CoCs is not always easy to comprehend.

In a study,[24] Consumer International[25] (hereafter called CI) raises a number of issues in regards to the lack of e-vendors' compliance with existing consumer protection law. It was mainly concluded that, despite the existence of laws and guidelines, e-consumers still face substantial problems. Among the findings of CI was that before consumers get to the point of actually placing an order, too many sites fail to:

- give a clear total cost;
- give consumers information about key terms and conditions of the contract ;
- state which countries they do business with.

CI admits that there were some improvements since 1999. More sites gave information about availability of goods, more had a returns policy, more provided confirmation of the order, and items were quicker to arrive. However, CI finally states that businesses still have a long way to go both in improving the site information and the reliable fulfilment of orders.

In a report of the European Commission Joint Research Centre[26], Guido Nannariello compares the certification process and performance of 56 different TMs. Dr Nannariello selected six TMs, that each represented a specific category, and compared them according to ten different criteria. We will use this method for a similar comparison of the nine TMs we have chosen. But we will also compare the content of the CoCs to the respective provisions of the EC consumer protection laws. We will use 6 out of the 10 criteria Dr Nannariello used in his examination. The CI study has pointed out the main problematic issues in regards to B2C e-commerce. Consequently, those should be dealt with in CoCs. We have therefore, for our following examination of the TMOs CoCs, selected the 6 criteria that represent those issues:

1. Identity of the vendor
2. Product and services
3. Order procedures
4. Customer service
5. Reference to legislation
6. Security

The provisions of the different TMO CoCs will be compared according to our chosen criteria and sub-criteria in tables. Some CoCs might be interpreted to imply further, not expressly stated requirements if the underlying purposes of certain provisions would also be considered. But we have only considered the criteria as fulfilled by the TMOs when they were explicitly stated in their CoCs.

The table boxes marked with X indicate that the examined TMO has this requirement in the CoC.

The boxes marked with -X indicate that the CoC fulfils this requirement but that the information in the CoC could be clearer. The boxes marked with (X) are only found in the assessment of EBTrust. EBTrust is quite a different cattle of fish as they work with a business model instead of a CoC. EBTrust have admitted to use more detailed criteria when assessing applicants but they have declined to reveal those to us. Therefore it is fair to say that EBTrust was given the benefit of the doubt when we marked them with (X). It is equally possible that EBTrust would have been given more credit in our comparison if all their assessment criteria had been available.

Identity of the vendor

A proper identification of the e-vendor via his website is essential should an e-consumer be able to perform his rights. This is especially so in trans-border trade where the consumer is in a vulnerable position.

CI study: Over a third of sites failed to tell consumers which countries they will do business with.

There are two sub-criteria in this part:

1.1 Identity of the vendor: name, physical business location, VAT number etc.

1.2 The Vendor's general obligations: Commitments to a third party such as code owner and customers.

Criteria	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
1.1	X	X	(X)	X	X
1.2	X				
	Nsafe	Labelsit	Gütezeichen	Clicksure	EC LAW
1.1	X	X	X	X	X ^[27]
1.2			X		

Products and services

A clear description of a product's characteristics, availability, total price and applicable warranties is particularly important in e-commerce. Contrary to conventional commerce, the consumer has very limited opportunity to scrutinise the product prior to the purchase. The lack of personal contact with the vendor also negates the opportunity to ask for availability, prices and warranties beforehand.

CI report: The e-vendors websites frequently lack this information and nearly one in five sites fail to give clear total cost of the transaction.

There are 5 sub-criteria for provisions about products and services:

2.1 Technical characteristics: Clear technical description of the product or service.

2.2 Qualitative characteristics: Qualitative characteristics, certifications and standards.

2.3 Availability: On-line information about the availability of the product or service.

2.4 Prices: Stated clearly and without hidden costs like taxes, packaging or delivery.

2.5 Warranties: Extended or in the scope that is provided by legislation.

Criteria	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
2.1		-X	X	-X	-X
2.2		-X	X	-X	-X
2.3		X	X	X	X
2.4	X	X	(X)	X	X
2.5	X	X	(X)	X	X
	Nsafe	Labelsit	Gütezeichen	Clicksure	EC LAW
2.1	X		X	X	-X[28]
2.2	X	X	X	X	-X[29]
2.3		X	X		
2.4	X	X	X		X[30]
2.5	X	X	X		X[31]

Order procedures

In this part The TMOs are compared according to 6 sub-criteria, the last being divided into two categories.

CI report: Less than two-thirds (63%) of sites provide an immediate, precise indication that an order was accepted. In these cases researchers were left uncertain whether their order had gone through. Because of this, recurrently orders were inadvertently placed twice. Sometimes the confirmation only stated that the order had been received and researchers later discovered the ordered item was not available. The contractual conditions lacked clarity and key information in e-mailed order confirmations was often missing and only two-thirds of sites quoted a target delivery time. In over half of the 340 cases the consumers were charged before the goods arrived and only a minority of retailers waited until goods were dispatched before billing the customer.

3.1 Order procedure: Clear, unambiguous.

3.2 Contractual condition: Available on the web.

3.3 Supply restrictions given: Validity in time and other restrictions (e.g. geographical).

3.4 Delivery conditions given: Place of delivery. Maximum time limit. Warranties etc.

3.5 Order error protections in place: To modify or annul the order, ordering summary.

3.6 Payments:

To do: to inform about/to be stated: Payment methods, time of payment

To avoid: At no time shall the enterprise/e-vendor accept payment before the contract is concluded.

Criteria	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
3.1	X	X	X	X	X
3.2	X	X	X		X
3.3	-X	X	(X)		

3.4	X	X	(X)	X	X
3.5	X	X		X	X
3.6 To do		X		X	X
To avoid					X
	Nsafe	Labelsite	Gütezeichen	Clicksure	EC LAW
3.1			X	X	X[32]
3.2		X	X	X	X[33]
3.3	X	X	X	X	X[34]
3.4	X	X	X	X	X[35]
3.5		X	X	X	X[36]
3.6 To do	X	X	X	X	X[37]
To avoid	X		X		

Customer service

Efficient customer service management in many cases is what distinguishes a reliable e-vendor from an unreliable one. The disturbing results in the CI study prove that there is a need of improvements in this area.

CI report: The researchers conducted a number of purchases from e-vendors around the world and 20 out of a total of 340 items ordered (6%) failed to arrive. In six of the 20 cases, the researcher was even charged for goods that never arrived. In nearly one in ten cases (9%) where goods were returned, the retailer failed to provide a refund. Only a minority of sites, investigated in the CI report, included the geographical address of the retailer, information on consumers' right to withdraw from the contract, or information on after-sales guarantees. The EC Distance Selling Directive provide consumers with a seven-day 'cooling-off' period but fewer than half of the examined EU-based sites complied with this provision. The return policy is also troublesome since only $\frac{3}{4}$ of the sites gave information about how unwanted or defective goods should be returned.

The CoCs will be examined below according to the following sub-criteria:

4.1 Existent customer service and Claims procedure: Specification and terms of claims procedure. Specification of the responsible person/clerk for customer service (phone, availability etc)

4.2 Cooling off period: Withdrawal conditions with indication of cooling off period. Refund terms.

4.3 Faulty goods: Refund of full purchase amount within 30 days if the product turns out to be faulty or different from the one ordered.

4.4 Solving disputes: The enterprise shall have an internal claims procedure system.

Criteria	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
4.1	X	X	X	X	X
4.2	X	X			X
4.3	X	X			X
4.4	X	X	X	X	X
	Nsafe	Labelsite	Gütezeichen	Clicksure	EC LAW
4.1	X	X	X	X	X[38]

4.2		X	X	X	X[39]
4.3				X	
4.4	X	X	X	X	

Reference to legislation

Certainly, the consumer is also protected by legislation and no CoC affects the mandatory legal provisions in terms of consumer protection law. Here, the TMOs will be assessed in respect of 2 sub-criteria.

CI report: Only ¼ of the sites where trans-border orders were placed informed the consumer about the applicable law.

5.1 Transaction: Each CoC should specify the references made to legislation for each issue covered (e.g. advertising, transactions, privacy, security, complaints etc.).

5.2 Consumer protection: Each CoC should specify the competent jurisdiction (in particular for trans-border transactions).

Criteria	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
5.1	-X	X			
5.2	-X	X			
	Nsafe	Labelsite	Gütezeichen	Clicksure	EC LAW
5.1			X		
5.2			X		

Security

Information security has been a much-debated topic since the emergence of e-commerce. It is common knowledge that the development of e-commerce was stifled due to the consumers' fear of being defrauded or of losing control over their personal data. Children are also particularly vulnerable. The following 4 sub-criteria assess the security requirements in the CoCs.

CI Report: A third of sites do not mention their privacy practices, and a quarter of sites do not mention their security practices.

6.1 Web site protection: Installation requirement, emergency procedures, hyperlinks etc.

6.2 Payment data protection: Security standards, security policy, responsibility for security, digital signature.

6.3 Personal data protection:

To do: Privacy policy, identifying the responsible person for privacy. Permission of consumers access to modify and cancel personal data. Information about the treatment of the data.

To Avoid: Collect sensitive personal information without consent. Send unsolicited email.

6.4 Children's protection: The enterprise shall take specific measures to protect minors.

Criteria	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
6.1	X		X		
6.2	X	X	X		X
6.3 To do	X	X	X	X	X
To avoid	X	X	X	X	X
6.4	X	X	(X)		X
	Nsafe	Labelsit	Gütezeichen	Clicksure	EC LAW
6.1				X	
6.2	X		X	X	
6.3 To do	X	X	X	X	X[40]
To avoid	-X		X	X	X[41]
6.4		-X	-X	X	X[42]

Another survey, backed by Ernst & Young in the US[43], further establishes the need of a trusted third party, i.e. a privacy TM, to certify an e-vendor's privacy policy. They conducted 1.529 interviews on-line and the survey concluded that most US consumers simply do not trust the e-vendors privacy policy unless he is certified. The European e-consumer has a somewhat stronger legal data protection than the US e-consumer and it is possible that this issue does not concern Europeans as much as Americans. However, the statistics are so overwhelming that it is unlikely that the European attitude would be very much different. 84 % of the US consumers are of the opinion that today a privacy certification should be a requirement for e-vendors. The top three concerns among US consumers were

-that companies would give away their collected information to other companies without the consumers' permission (75 %),

-that their transactions may not be secure (70 %) or

-that hackers could steal their personal data (69 %).

According to the survey, a company certified for privacy by a third party would convince 91% of the consumers to do more business with that company.

Summary of the CoC comparison

This table summarises the total number of marks for every examined TMs. We have not made any distinction between X, -X and (X) marks in this summary.

TMO	Which?	Trustedshops	EBTrust	Betterweb	E-handelsfonden
# Criteria fulfilled	20	22	17	14	20
TMO	Nsafe	Labelsit	Gütezeichen	Clicksure	EC Law
# Criteria fulfilled	13	15	23	18	16

The rather low rating of Nsafe could be explained by the fact that a lot of the provisions in their CoC are not binding for the e-vendor. Some provisions are rather like recommendations and were, thus, not marked. The Betterweb rating is also quite low and there is a specific reason for this. Their CoC requires the e-vendor to inform the e-consumer about almost every criterion we have assessed. However, in some cases, they do not put up any quality requirements for the e-vendors policies. Example: Betterweb's CoC requires the e-vendor to inform the e-consumer about his cancellation policies. However, a policy that does not include a right of cancellation will nevertheless comply with Betterwebs CoC, as long as the e-consumer is informed about this.

The volume of complaints

Most of the TMOs are fairly new and a have not yet received many complaints in regards to certified e-vendors. However, two of the largest European TMOs, Which? and TrustedShops have been around for a while and have very generously provided us with their statistics. Also the Danish E-handelsfonden, The Austrian Gütezeichen and the Norwegian Nsafe shared their statistics with us, but they are more difficult to evaluate since here less certifications were issued.[44]

The statistics shown below represent the total number of certified e-vendors, the number of complaints the TMOs have received in regards to the certified e-vendors and the number of cases resolved.

Trustmark	Certified vendors	No. of complaints p.a.	Cases resolved
Which?[45]	2.077	2.248 (2001)	100 %
TrustedShops[46]	322	4.500 (since the start of early 2000)	30 % cases with financial return due to the insurance. The remaining 70 % were resolved by mediation or other means
Nsafe[47]	55	150 (2001)	80 % cases in which the consumer was satisfied with the solution.
E-Handelsfonden [48]	75	2	?
Gütezeichen[49]	20	4 (2001)	100 %

The first interesting fact is the high number of complaints Trusted Shops has received in comparison to the other TMOs. That is not necessarily a bad sign. It is unlikely that vendors certified by Trusted Shops behave worse than the ones certified by Which?. A more probable reason might be that Trusted Shops has a more successful method to communicate with the consumers. The Trusted Shops insurance concept creates a natural link directly between the consumer and the TMO since the consumer must sign up for the insurance. Possibly, this direct link makes Trusted Shops more accessible to the consumer who therefore is more likely to use the TMO as a forum for complaints.

Approval rate and cost for certification

Not every company applying for a TM passes the requirements set up by the TMO. Our research has shown that the approval rate varies between the different TMOs. The "Vendors excluded" column shows how many certified e-vendors had their TM withdrawn as a result of a sanction from the TMO.

Trustmark	Certified vendors	Approval rate	Vendors excluded	Price of TM p.a. / Initial certification fee

Which?	2077	30%	16	0 / 0
Trustedshops	322	80%	1	550-8.800 € */ -
Nsafe	55	50%	?[50]	1.250 € p.a / 400 €
E- Handelsfonden	75	?[51]	0	400-1.200 € p.a.* / 200-650 € *
Gütezeichen	20	66%	0	363 € / 363-1090*
Betterweb[52] (Swe)	4	100%	0	15.000 € / -

* The price depends on the size of the applying e-vendor

It seems the approval rate is higher the more expensive the TM. The reason could be that companies that apply for expensive TMs are more eager to obtain the approval and make a greater effort to comply with the CoC. Another reason might be that the expensive TMOs are more eager to approve applicants since every new client represents a substantial income. The latter scenario is worrying and ignites the question of the TMOs impartiality in disputes between certified e-vendors and consumers. Which?, being free of charge, have also excluded far more companies from their scheme for reasons of non-compliance with the CoC than any other TMO. This indicates that a non-profit TMO is more likely to issue sanctions than a TMO with a financial interest in the proceedings.

The effect of a trustmark

The future development of TM schemes depends on the fate of the certified e-vendors and their sales statistics. Without an improvement there is simply no reason for an e-vendor to apply for any kind of certification. All TMOs claim in some way that a certification would be beneficial to the e-vendor. We asked a number of TMOs whether they had any statistics or other proofs that could verify an actual increase. We got a wide variety of answers and this issue seemed to be rather troublesome. One TM project leader revealed, in confidence, that he had asked his employer the very same question and that he had been instructed to claim that an increase would occur and that the organisation had the evidence to prove it. However, he was not satisfied with that answer and when he investigated the matter he found out that the "evidence" was nothing more than a subjective estimation of a senior employee. Both E-handelsfonden and Nsafe admitted that they did not have any concrete evidence of an increase in sales. Betterweb also admitted that they did not have any statistics regarding the effect of TMs in B2C e-commerce. But they claimed that several surveys proved that certifications in general would improve the performance of the certified business. Trusted Shops claim on their website that their TM can increase the sales up to 10-30%. When we questioned them about this they admitted that this was a statement of specific certified e-vendors and not based on scientific statistics. However, they claimed that sale increases normally occur but that they could not provide us with an exact number. Trusted Shops gave reference to other statistics in order to prove its statement. Between 15-60 % of the e-consumers (varies according to respective e-vendor) sign up for Trusted Shops "money back guarantee" and it is likely that a lot of e-consumers would not have gone through with the purchase without this insurance. There was only one TMO of those questioned, which had conducted a survey in regards to this issue: Which? had done so some years ago when they asked 400 of their certified e-vendors whether they had experienced any increase in sales since obtaining the TM. The result was that the certified companies estimated an increase between 10-50 %.

TMOs and asymmetrical information[53]

The market of trustmarks might experience problems since the existing TMs differ in quality of consumer protection and other qualitative characteristics. This is not uncommon in a market economy and has been dealt with thoroughly in the discipline of economic theory. The worst-case scenario is that a situation economists refer to as asymmetric information might occur.

The basic factor rendering this a potential problem for our topic is that the average e-consumer does not possess the necessary knowledge or eagerness to evaluate all existing TMs and CoCs. He will therefore find himself in a position of ignorance in regards to the actual implications of the individual TMs for him as a consumer. He will therefore, according to the theory of asymmetric information, consider all TMs to be of equal quality. Indeed, it might be in the interest of some TMOs to preserve the consumers ignorance, either in order to avoid undesirable comparison or to attempt to establish their TM as unique in the public mind.

This is an exemplary situation of asymmetric information[54]. An imperfect informational gap between e-vendors and consumers arises: e-vendors are fully aware of the implications of being certified with a specific trustmark, but the e-consumers cannot assess all the implications at the time of the purchase.

As mentioned above e-consumers might consider all TMs to be of equal benefit for them. When TMs with a smaller benefit for e-consumers (i.e. no ADR function, a very haphazard CoC etc.) are valued equally to TMs with a higher quality or benefit for the e-consumer, a healthy competition which results in the achievement of higher overall standards will not ensue. This is what the economists would describe as an adverse selection[55], leading to a market failure[56].

The concept of "signalling"[57] would be a suitable way to counteract these unfavourable effects and also to close the informational gap. This concept implies, that, should an independent, reputable and already trusted entity approve of a TMO, this trust would be transferred to the approved and, thus, leverage its credibility. In marketing terms this is described as co-branding. In the TMO market an example of this is TrustedShops, which displays the EU logo on its website.

Examination must precede approval and approval can only continue when supervision is conducted on a regular basis. It follows that supervision bodies have to be established[58]. But supervision bodies need a basis for their examination and therefore common benchmarks have to be founded.

The following chapter will provide an overview of the issues of benchmarks and supervision in relation to TMOs.

Supervision and international benchmarks

We regard a sheer jungle of trustmarks, ADR schemes and COCs. The system that was supposed to induce the e-consumer's confidence, might confuse the latter even further[59]. At times, it surely confused the authors of this paper during their research. The current situation could lead to a distrust in regards to trustmarks in general, should some of the certifying organisations turn out to be black sheep. In view of the success of some current TMOs and the novelty of these schemes, more will emerge and swim on their wave of success, even if they do not offer the same adequate service and consumer-friendly CoC. During our researches and interviews with various representatives of TMOs, we frequently came across surprising ignorance in regards to other schemes or official initiatives. Some of the organisations were under the misapprehension to have developed a unique concept[60]. Additionally, some trustmarks schemes could serve the interests of contradictory interest groups: the CoC owned by a consumer oriented TMO might easily contain different provisions than that drafted by an alliance of businesses.

Even though it could be said that competition between different trustmark systems should be encouraged in order to increase choice and to drive up standards, a common preferably international basis for COCs and also a certain amount of control of trustmark organisations is certainly necessary. In this chapter it will be shown that these two conditions are not only serviceable in enhancing consumer confidence but also in easing the way for businesses towards e-commerce.

1. Benchmarks

The emergence of an increasing number of TMOs is related to the phenomena of self-regulation in the Internet context[61]. The "fashion" for self-regulation partly derives from the inherent uncertainties of the Internet environment: the borderless and therefore seemingly lawless space. Rapidly and constantly evolving technology, used for commercial purposes, is another factor.

Self-regulation is a voluntary action by certain interests groups to facilitate their activities. These interest groups hereby fulfil a very important role, because they act as pioneers to a potential binding follow-up regulation by the official regulatory bodies[62]. They can swiftly adapt their rules to the immediate demands of the situation with flexibility and dare to make experiments more easily than official regulators. The establishment of ICANN[63] is a notable example for self-regulation. Trustmark schemes with their COCs and ADRs also follow this tradition.

It must be noted that the self-regulation will never bypass existing binding legal provisions. But all conditions which are freely negotiable. i.e. mandatory, can be determined by the respective negotiating parties.

Self-regulation of gravely important legal matters, e.g. consumer protection, will naturally be followed by official governmental regulation. It is a fact that self-regulation is problematic in terms of its application scope: the self-regulating associations can only bind their members or those who have subscribed to their CoCs[64]. Furthermore there is uncertainty in terms of sanctions and enforceability[65].

Any legal questions in connection with the globe-spreading Internet will naturally bear the mark of harmonisation. As a consequence, supranational regulation is indicated.

In regards to the current labyrinth of trustmark schemes and respective CoCs numerous organisations have realised the need for common and internationally valid benchmarks. The OECD[66] adopted the "Guidelines for Consumer Protection in the Context of Electronic Commerce"[67] on the 9th of December 1999 and the E-Confidence Forum[68] by the EU Commission has published a second draft of their "Principles for E-commerce Codes of Conduct"[69]. There are also several initiatives for common CoC principles by business organisations like the GBDe[70] ("Trustmarks Guidelines and Recommendations"[71], 25th September 2000) and BBBOOnline[72], FEDMA[73] and Eurochambres[74] are developing an international trustseal and ADR program, which they are hoping to have in place by early 2002[75]. This international "Online Trust Alliance" was joined by Asian business organisations, KIEC[76], JADMA[77] and JCCI[78], in September 2001[79]. It must be noted that each of these organisations in turn have their own CoCs or trustmark schemes. TrustUK[80] even provides an umbrella mark[81] for code owners (i.e. TMOs) and sets forth its own minimum core principles for online CoCs[82].

Concerns have been voiced by the business organisation GBDe that too strong an interference by governments and regulatory bodies in the development of trustmark schemes and CoCs would represent a disincentive for innovation and competition and be to the detriment of the e-consumer [83].

However, as all CoCs naturally are modelled according to existent legal provisions, this warning is a hollow one. As was shown above, the CoCs of the current TM schemes seem to bring some order into the many consumer protection provisions[84], but, with few exceptions, they do not exceed them in quality of protection. In most cases they simply quote the existent law.

The current developments in regards to consumer protection law must also be considered in discussing benchmarks for CoC's and trustmark schemes. The EU Commission, e.g., has recently presented a "Green Paper on EU Consumer Protection"[85]. The paper shall "launch an extensive public consultation on the future direction of EU consumer protection"[86] as the "internal market is faced with a fragmented set of regulations and a fragmented system of enforcement"[87].

Furthermore, some of the existing consumer protection regulations are outdated since market practices and technological development have moved on.

The Commission appreciates that effective and binding self-regulation qualifies in supporting the objective of a legal environment that will enhance the e-consumers confidence and thereby boost b2c e-commerce[88]. But they also state that there are no means to ensure an effective self-regulation throughout the whole of the EU[89]. Considering the current trustmark and CoC maze, this is a fact.

A reform, up-date[90] and further harmonisation of the EU consumer protection law could accommodate core regulations for an EU-wide CoC and secure the establishing of trustmark schemes on a minimum quality level effectively in all Member States. Thus, this could set international benchmarks for self-regulatory activities in the internal market of the EU. Other developments within the EU might also aid in establishing core principles for e-commerce, especially in regards to CoCs. Last year, the EU Commission adopted a Communication on European Contract Law[91] in order to launch a debate on the divergence of national contract laws and the facilitating of cross-border contracts within the Internal market[92]. This initiative might in future lead to the development of an European Civil Code, which would also affect on b2c e-commerce[93]. The Euro as the common new currency would further aid in establishing greater confidence in e-commerce[94]. In fact, the EU as a supranational institution is the most suitable body to put these kind of benchmarks in place for its Member States. We have here a singularly fitting international consumer market and legal infrastructure for this purpose.

The approach of the EU Commission has been criticised by certain U.S. business organisations, foremost the USCIB[95], which stated that businesses would be unnecessary burdened and restrained.[96]

But in fact, common official principles for CoCs and trustmark schemes could make it much easier for SMEs as well as TMOs to find their footing in e-commerce. Finally, there would be a common ground on which to elaborate improved concepts and a sound basis for new ideas of service.

The self-regulation in regards to trustmark schemes has arrived at a stage where it is appropriate to take the next step in order to optimise the benefits of these ideas. Testing the schemes on the market was fairly successful, an improvement of the adaption of e-commerce systems is evident.

The concept of common CoCs and ADRs can now be used to improve respective applicable legislation.

2. Supervision

Common binding principles for all trustmark organisations imply that there must be compliance. In order to ensure that compliance will ensue, it is natural to have something akin to a supervision and monitoring body in place. Code owners, i.e. TMOs, would then be subjected to formal approval or accreditation, supervision and assessment in terms of their CoCs, e-vendor certification procedure and their process of monitoring the compliance of the e-vendors/code subscribers. Supervision of the various TMOs would serve consumers and e-vendors alike. TMOs have a strong position as they can "rate" sites. Their rating and subsequent marking of e-vendors' sites as trustmarkworthy or not will affect the e-vendors standing. An independent supervision of the TMOs, again, would ensure that they cannot abuse that position.[97]

When talking about supervision, it is important to differ between:

- **what** in/about a TMO/code owner shall be supervised and
- **how** the supervisor is structured.

TMOs have already expressed the desire for a form of official recognition and have turned to public authorities, including the EU, for endorsement or formal approval[98]. This probably derives from the need to attain distinction among the different TMOs and as well from the competition aspect. There is obviously no desire of TMOs to steer completely clear of official institutions.

Models for the establishment of a monitoring and accreditation system for trustmark organisations are already in place or have already been proposed.

- TrustUK[99], endorsed by the UK government, certifies code owners with a mandatory online CoC. The main conditions for their "umbrella-certification" include minimum core principles for the code owners CoC, an effective enforcement/redress mechanism (incl. a complaint handling system and ADR) and a monitoring system (for which TrustUK sets minimum standards as well) for the code subscribers' compliance (the monitoring to be carried out either by the code owner himself or an independent body).

TrustUK may withdraw or refuse accreditation, give out recommendations to TMOs and a complainant who is unsatisfied with the TMO can refer the complaint to TrustUK, which will investigate accordingly. TrustUK also has the right to update its principles.

TrustUK has therefore a simple 3-step hierarchy:

TrustUK = supervision body (approval and monitoring of TMOs)

TMOs = CoC owners (certify and monitor code subscribers)

code subscribers (e-vendors)

- The E-Confidence Forum has drafted "Guiding principles for 'approval and monitoring' bodies" and "Options for 'approval and monitoring' " in connection with their "Principles for e-commerce CoCs". The hierarchical structure equals TrustUK's.

- UNICE[100] and BEUC[101] have presented an elaborate neutral third party assessment for trustmark schemes in their joint paper[102], hereby commenting on the E-Confidence Forum guidelines (1st draft). Central for this assessment are the E-Confidence Guidelines. An E-Confidence Committee shall be responsible for the whole E-Confidence scheme. A TMO can join the E-Confidence initiative after the independent third party has certified its compliance with the E-Confidence guidelines. The third party will monitor and assess the TMOs. The third party, again, has to meet a certain definition and be verified as such by the Committee.

Here we even have a 4-step hierarchy:

E-Confidence Committee



Independent third party



TMO



e-vendor/code subscriber

The proposed origins of the supervision bodies also vary. They range from national approval bodies (consisting of interest group organisations or governmental bodies) cooperating on a common platform to the option of a single hyper-supervision body.

Suggestions[103] have been made to draw in the national accreditation bodies which are members of the European accreditation organisation[104]. ISO standards, in particular ISO 9000:2001 and ISO/IEC Guide 62 would play a part then.

It is obvious that none of the organisations and initiatives that have already attained certain status and recognition would be content to relinquish their positions in favour of a single international body. Considering the problem on an EU-level, should there ever be a common EU regulation on trustmarks (incl. CoC principles and the minimum requirements for a TMO), a respective EU supervision body could be construed with representatives of the currently existing TM and CoC initiatives.

Regarding the current labyrinthine situation, it is probably better to take one step at a time and work on a common set on benchmarks first. In the meantime, the supervision of certain groups of TMOs (like TrustUK does now) could explore the demands of such a task.

Closing comments

The results from our research have convinced us that Trustmarks are beneficial to e-consumers and e-vendors alike. The e-consumer's protection is undoubtedly enhanced even if some CoCs needs to be improved. It is also likely that a certified e-vendor will experience an increase in sales.

With a suitable incorporation of the e-commerce trustmark and CoC concept into legislation and vice versa, b2c e-commerce could find a firm foundation for further development.

In the opinion of the authors, a more intensive marketing of trustmarks to the consumers as well as to e-vendors would be desirable in order to raise awareness and trust. Once that has been achieved, trustmarks can be a wheel on the train riding towards B2C e-commerce utopia.

[1] <http://www.betterweb.com>

[2] <http://www.diamondway-buddhism.org/trust/kkbn-tru.htm>

[3] We will only use the term CoC in the paper

[4] since the authors have a specific interest in that region

[5] <http://whichwebtrader.which.net>

[6] CA has an online presence at <http://www.which.net>

[7] so far in the Netherlands, Belgium, Italy, France, Spain and Portugal

[8] <http://www.trustuk.uk.org>

[9] <http://www.trustedshops.de>

[10] within the framework of the TEN Telecom initiative

[11] <http://www.dnv.com>

[12] <http://www.betterweb.com>

[13] <http://www.pwcglobal.com>

[14] <http://www.e-handelsfonden.dk>

[15] Translation is done by the authors since no official translation exists

[16] <http://www.nsafe.no>

[17] <http://www.labelsite.org>

[18] <http://www.guetezeichen.at>

[19] <http://www.ombudsmann.at> ; This project was developed by the Austrian Institute for Applied Telecommunication (<http://www.oiat.at>) and the VKI, the Austrian consumer organisation.

[20] Information provided by Mr. Jürgen Gangoly, Project Leader of the Austrian Internet Ombudsmann.

[21] <http://clicksure.com>

[22] Recreational Software Advisory Council on the Internet, <http://www.rsac.org>

[23] Such as the E-commerce directive. 2000/31/EC

[24] Should i buy? Shopping online2001: An international comparative study of international E-commerce

[25] www.consumersinternational.org

[26] Nannariello, Guido, E-commerce and Consumer Protection. EC Joint Research Centre

[27] Article 5. 2000/31/EC E-commerce Directive

[28] Article 4:1 1997/7/EC Distance selling Directive

[29] Article 4:1 1997/7/EC Distance selling Directive

[30] Article 5:2 2000/31/EC E-commerce Directive

[31] Article 5:1 1997/7/EC Distance selling Directive

[32] Article 10:1. 2000/31/EC E-commerce Directive

[33] Article 10:3. 2000/31/EC E-commerce Directive

- [34] Article 4:1. 1997/7/EC Distance selling Directive
- [35] Article 4:1. 1997/7/EC Distance selling Directive
- [36] Article 11:4. 2000/31/EC E-commerce Directive
- [37] Article 4:1. 1997/7/EC Distance selling Directive
- [38] Article 5:1 in the 1997/7/EC Distance selling Directive
- [39] Article 6:1 in the 1997/7/EC Distance selling Directive.
- [40] Article 7 in the 95/46/EC Data Protection Directive
- [41] Article 8 in the 95/46/EC Data Protection Directive
- [42] Article 4:2 in the 1997/7/EC Distance selling Directive
- [43] "Consumers do not trust privacy policies", 20th February 2002, <http://www.out-law.com>
- [44] Unfortunately, we were not able to collect the statistics from the other TMOs prior to the deadline for this paper. We want to make clear that the lack of the respective statistics is not due to unwillingness on their part
- [45] All stats from Which is provided by Paul Kitchen.
- [46] All stats from Trusted Shops is provided by Jörg Bredenbeck.
- [47] All stats from Nsafe is provided by Rolf Erik Hasle.
- [48] All stats from E-handelsfonden is provided by Anette Höyrup.
- [49] All stats from Gutezeichen is provided by Juergen Gangoly.
- [50] Nsafe simply answered YES to our question.
- [51] E-handelsfonden stated that quite a lot of applicants were disapproved.
- [52] All stats from Betterweb is provided by Jenny Stehn.
- [53] The economic theory of asymmetrical information is based on the research of George Akerlof, Michael Spence and Joseph Stiglitz, for which they were awarded The Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel 2001.
- [54] Case, Fair, Gärtner, Heather "Economics" p. 383
- [55] Case, Fair, Gärtner, Heather "Economics" p 382
- [56] Case, Fair, Gärtner, Heather "Economics" p 287
- [57] "Markets with asymmetric Information" p.5
- [58] George Akerlof argues that many market institutions have emerged as attempts to resolve the

problems of asymmetrical information.

[59] „Trust marks build web faith", Abigail Waraker, 16th April 2001, IT Week, <http://www.zdnet.co.uk/itweek/brief/2001/15/management>

[60] Others we found remarkably well informed.

[61] The fraction of the Cyberliberitarians advocate the extreme form of self-regulation of the Internet, i.e. no official intervention at all.

[62] OECD Committee on Consumer Policy, "First report: government and private sector initiatives to promote and implement the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce", 28th February 2001, DSTI/CP(2000)7/FINAL

[63] <http://www.icann.org>

[64] "The feasibility of a general legislative framework on fair trading, Vol. I and II", Study produced by the Institut für Europäisches Wirtschafts- und verbraucherrecht e. v., 20th April 2001, p. 94, http://europa.eu.int/comm/dgs/halth_consumer/library/surveys/sur21_vol2_en.pdf

[65] EU Green Paper on European Union Consumer Protection, 2nd October 2001, COM(2001)531 final, p. 5

[66] <http://www.oecd.org>

[67] available in different languages from <http://www.oecd.org/dsti/sti/it/consumer>

[68] <http://econfidence.jrc.it>

[69] http://econfidence.jrc.it/default/page.gx?_app.page=entity.html&_app.action=entity&_entity.object=EC_FORUM0000000000000088&_entit

The first draft can be found here: http://econfidence.jrc.it/default/page.gx?_app.page=entity.html&_app.action=entity&_entity.object=EC_FORUM0000000000000088&_entit-Draft1.pdf

[70] <http://www.gbde.org>

[71] available from <http://consumerconfidence.gbde.org>

[72] <http://www.bbbonline.com>

[73] <http://www.fedma.org>

[74] <http://www.eurochambres.be>

[75] Chambers Europe, "Transatlantic initiative to promote e-trust", May 2001, No. 54

[76] Korean Institute for Electronic Commerce, <http://www.kiec.or.kr>

[77] Japan Direct Marketing Organisation, <http://www.jadma.org> ; JADMA also revised its Guidelines for Electronic Direct Marketing to reflect the principles of the OECD Guidelines.

[78] The Japan Chamber of Commerce International ; In June 2000 they launched together with JADMA an online shopping trustmark regime.

[79] BBBonline Press Releases, <http://www.bbbonline.com/about/press/2001/092101.asp> and http://www.bbbonline.com/about/press/2001/101701_01.asp

[80] <http://www.trustuk.org.uk>

[81] „Trust marks build web faith", Abigail Waraker, 16th April 2001, IT Week, <http://www.zdnet.co.uk/itweek/brief/2001/15/management>

[82] "Approval Criteria", Core principles for online codes of practice, <http://www.trustuk.org.uk/download/ApprovalsCriteria.pdf>

[83] GBDe Trustmarks Guidelines and Recommendations, 25th September 2000, <http://www.consumerconfidence.gbde.org>

[84] which is convenient for e-vendors and e-consumers alike

[85] 2nd October 2001, COM(2001)531 final

[86] supra, 1.

[87] supra, 2.1

[88] supra, 4.4

[89] supra, 4.4

[90] supra, 2.2, first subparagraph: The Commission has recognised that certain key areas of the business-consumer commercial practises are not covered by EU rules.

[91] COM(2001) 398 final, 11th July 2001

[92] "European Contract Law: commission sets the stage for a broad debate", 13th July 2001, http://www.europa.eu.int/comm/dgs/health_consumer/library/press/press167_en.html

[93] "Response to the Communication on European Contract Law", European Consumer Law Group, ECLG/343/2001, 15th October 2001; "Opinion on the Communication on European Contract Law", Dr. Sergio Cámara Lapuente, 13th October 2001, http://europa.eu.int/comm/consumers/policy/developments/contract_law/comments/5.28.pdf

[94] http://www.europa.eu.int/comm/dgs/health_consumer/library/press/press190_en.html

[95] <http://www.uscib.org/index.asp?documentID01933>

[96] This statement is contradictory, as there already exist numerous legal provisions businesses have to acknowledge.

[97] Nicolas P.Terry, "Rating the raters: legal exposure of trustmark authorities in the context of consumer health informatics", Journal of Medical Internet Research 2000; 2(3):e18, <http://www.jmir.org/2000/3/e18/>

[98] Econfidence Forum, http://econfidence.jrc.it/default/show.gx?Object.object_id=EC_FORUM0000000000000088

[99] <http://www.trustuk.org.uk>

[100] Union of Industrial and Employer's Confederations in Europe, <http://www.unice.org>

[101] European Consumers' Organisation, <http://www.beuc.org>

[102] http://econfidence.jrc.it/default/page.gx?_app.page=entity.html&_app.action=entity&_entity.object=EC_FORUM0000000000001253&_entit

[103] Especially by the TMO Clicksure, which is only natural since they have considered the ISO/IEC Guide 62 for their scheme; "Clicksure Comment on the first draft of the E-Confidence Guidelines", available from <http://www.econfidence.jrc.it>

[104] <http://www.european-accreditation.org>