

OECD Recommendation of the OECD Council Concerning Guidelines for Consumer Protection in the Context of Electronic Commerce (Organisation for Economic Co-operation and Development) 1999

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1 **OECD Recommendation of the OECD Council
Concerning Guidelines for Consumer Protection in the
Context of Electronic Commerce (Organisation for
Economic Co-operation and Development) 1999**

[Preamble]

2 Consumer laws, policies and practices limit fraudulent, misleading and unfair commercial conduct. Such protections are indispensable in building consumer confidence and establishing a more balanced relationship between businesses and consumers in commercial transactions.

3 The inherently international nature of the digital networks and computer technologies that comprise the electronic marketplace requires a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework for electronic commerce. The global network environment challenges the abilities of each country or jurisdiction to adequately address issues related to consumer protection in the context of electronic commerce. Disparate national policies may impede the growth of electronic commerce, and as such, these consumer protection issues may be addressed most effectively through international consultation and co-operation. OECD Member governments have recognised that internationally co-ordinated approaches may be needed to exchange information and establish a general understanding about how to address these issues.

4 Governments are challenged to help facilitate social development and economic growth based on emerging network technologies, and to provide their citizens with effective and transparent consumer protection for electronic commerce. A variety of consumer protection laws exist that govern business practices. Many OECD Member countries have begun to review existing consumer protection laws and practices to determine whether or not changes need

to be made to accommodate the unique aspects of electronic commerce. Member countries are also examining ways in which self-regulatory efforts can assist in providing effective and fair protection for consumers in that context. Reaching these objectives requires insight and input from throughout civil society, and all of these initiatives should be undertaken as part of a global co-operative effort among governments, business, consumers and their representatives.

In April of 1998, the OECD Committee on Consumer Policy began to develop a set of general guidelines to protect consumers participating in electronic commerce without erecting barriers to trade. These guidelines represent a recommendation to governments, businesses, consumers, and their representatives as to the core characteristics of effective consumer protection for electronic commerce. However, nothing contained herein should restrict any party from exceeding these guidelines nor preclude Member countries from retaining or adopting more stringent provisions to protect consumers online. In particular, the purpose of the guidelines is to provide both a framework and a set of principles to assist:

Governments in reviewing, formulating and implementing consumer and law enforcement policies, practices, and regulations if necessary for effective consumer protection in the context of electronic commerce;

Business associations, consumer groups and self-regulatory bodies, by providing guidance as to the core characteristics of effective consumer protection that should be considered in reviewing, formulating, and implementing self-regulatory schemes in the context of electronic commerce; and

Individual businesses and consumers engaged in electronic commerce, by providing clear guidance as to the core characteristics of information disclosure and fair business practices that businesses

should provide and consumers should expect in the context of electronic commerce.

9 **In light of the above, the Council,**

10 Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

11 Having regard to the Ministerial Declaration on Consumer Protection in the Context of Electronic Commerce of 8-9 October 1998 [C(98)177 (Annex 2)];

12 Having regard to the Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data of 23 September 1980 [C(80)58(Final)], and the Ministerial Declaration on the Protection of Privacy on Global Networks of 8-9 October 1998 [C(98)177 (Annex 1)];

13 Having regard to the Ministerial Declaration on Authentication for Electronic Commerce of 8-9 October 1998 [(C98)177 (Annex 3)];

14 Having regard to the Recommendation of the Council concerning Guidelines for the Security of Information Systems of 26-27 November 1992 [C(92)188/FINAL], and the OECD Recommendation concerning Guidelines on Cryptography Policy of 27 March 1997 [C(97)62/FINAL] ;

15 Recognising that electronic commerce may offer consumers new and substantial benefits, including convenience, access to a wide range of goods and services, and the ability to gather and compare information about such goods and services;

16 Recognising that certain special characteristics of electronic commerce, such as the ease and speed with which businesses and

consumers can communicate about goods and services and engage in cross-border transactions, may create commercial situations which are unfamiliar to consumers and which may put their interests at risk, it is increasingly important for consumers and businesses to be informed and aware of their rights and obligations in the electronic marketplace;

Recognising that rules regarding applicable law and jurisdiction in the consumer context could have implications for a broad range of issues in electronic commerce, just as rules regarding applicable law and jurisdiction in other contexts could have implications for consumer protection;

Recognising that consumer confidence in electronic commerce is enhanced by the continued development of transparent and effective consumer protection mechanisms that limit the presence of fraudulent, misleading or unfair commercial conduct online;

Considering that electronic commerce should be open and accessible to all consumers; and

Considering that governments, businesses, consumers and their representatives should devote special attention to the development of effective cross-border redress systems.

RECOMMENDS THAT MEMBER COUNTRIES:

Take the necessary steps to implement the relevant sections of the Guidelines contained in the Annex attached to this Recommendation;

Widely disseminate the Guidelines to all relevant governmental departments and agencies, to business sectors involved in electronic commerce, to consumer representatives, to the media, to educational institutions, and to other relevant public interest groups;

24 Encourage businesses, consumers, and their representatives to take an active role in promoting the implementation of the Guidelines at the international, national, and local levels;

25 Encourage governments, businesses, consumers and their representatives to participate in and consider the recommendations of ongoing examinations of rules regarding applicable law and jurisdiction;

26 Invite non-member countries to take account of the terms of this Recommendation in reviewing their consumer policies, initiatives and regulations;

27 Consult, co-operate, and facilitate information sharing among themselves and non-member countries, businesses, consumers, and their representatives, at both national and international levels, in providing effective consumer protection in the context of electronic commerce in accordance with the Guidelines;

28 Implement the Guidelines in a manner that encourages the development of new business models and technology applications that benefit consumers; and encourage consumers to take advantage of all tools available to strengthen their position as buyers; and

29 INSTRUCTS the Committee on Consumer Policy to exchange information on progress and experiences with respect to the implementation of this Recommendation, review that information and report to the Council in 2002, or sooner, and, as appropriate, thereafter.

30 ANNEX - GUIDELINES

31 PART ONE - SCOPE

32 These Guidelines apply only to business-to-consumer electronic

commerce and not to business-to-business transactions.

PART TWO - GENERAL PRINCIPLES 33

I. TRANSPARENT AND EFFECTIVE PROTECTION 34

35 Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.

36 Governments, businesses, consumers, and their representatives should work together to achieve such protection and determine what changes may be necessary to address the special circumstances of electronic commerce.

II. FAIR BUSINESS, ADVERTISING AND MARKETING PRACTICES 37

38 Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.

39 Businesses should not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair.

40 Businesses selling, promoting or marketing goods or services to consumers should not engage in practices that are likely to cause unreasonable risk of harm to consumers.

41 Whenever businesses make information available about themselves or the goods or services they provide, they should present such information in a clear, conspicuous, accurate and easily accessible manner.

42 Businesses should comply with any representations they make regarding policies or practices relating to their transactions with consumers.

43 Businesses should take into account the global nature of electronic commerce and, wherever possible, should consider the various regulatory characteristics of the markets they target.

44 Businesses should not exploit the special characteristics of electronic commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.

45 Businesses should not use unfair contract terms.

46 Advertising and marketing should be clearly identifiable as such.

47 Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.

48 Businesses should be able to substantiate any express or implied representations as long as the representations are maintained, and for a reasonable time thereafter.

49 Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages.

50 Where consumers have indicated that they do not want to receive unsolicited commercial e-mail messages, such choice should be respected.

51 In a number of countries, unsolicited commercial e-mail is subject to specific legal or self-regulatory requirements.

52 Businesses should take special care in advertising or marketing that is targeted to children, the elderly, the seriously ill, and others

who may not have the capacity to fully understand the information with which they are presented.

III. ONLINE DISCLOSURES

53

A. INFORMATION ABOUT THE BUSINESS

54

Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum:

55

Identification of the business - including the legal name of the business and the name under which the business trades; the principal geographic address for the business; e-mail address or other electronic means of contact, or telephone number; and, where applicable, an address for registration purposes and any relevant government registration or license numbers;

56

Prompt, easy and effective consumer communication with the business;

57

Appropriate and effective resolution of disputes;

58

Service of legal process; and

59

Location of the business and its principals by law enforcement and regulatory officials

60

Where a business publicises its membership in any relevant self-regulatory scheme, business association, dispute resolution organisation or other certification body, the business should provide consumers with appropriate contact details and an easy method of verifying that membership and of accessing the relevant codes and practices of the certification body.

61

B. INFORMATION ABOUT THE GOODS OR SERVICES

63 Businesses engaged in electronic commerce with consumers should provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an informed decision about whether to enter into the transaction and in a manner that makes it possible for consumers to maintain an adequate record of such information.

C. INFORMATION ABOUT THE TRANSACTION

65 Businesses engaged in electronic commerce should provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction.

66 Such information should be clear, accurate, easily accessible, and provided in manner that gives consumers an adequate opportunity for review before entering into the transaction.

67 Where more than one language is available to conduct a transaction, businesses should make available in those same languages all information necessary for consumers to make an informed decision about the transaction.

68 Businesses should provide consumers with a clear and full text of the relevant terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such information.

69 Where applicable and appropriate given the transaction, such information should include the following:

- 70 (i) an itemisation of total costs collected and/or imposed by the business;
- 71 (ii) notice of the existence of other routinely applicable costs to

62 the consumer that are not collected and/or imposed by the business;

(iii) terms of delivery or performance; 72

(iv) terms, conditions, and methods of payment; 73

(v) restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, geographic or time restrictions; 74

(vi) instructions for proper use including safety and health care warnings; 75

(vii) information relating to available after-sales service 76

(viii) details of and conditions related to withdrawal, termination, return, exchange, cancellation and/or refund policy information; and 77

(ix) available warranties and guarantees. 78

All information that refers to costs should indicate the applicable currency. 79

IV. CONFIRMATION PROCESS 80

To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction. 81

The consumer should be able to cancel the transaction before concluding the purchase. 82

V. PAYMENT

84 Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

85 Limitations of liability for unauthorised or fraudulent use of payment systems, and chargeback mechanisms offer powerful tools to enhance consumer confidence and their development and use should be encouraged in the context of electronic commerce.

VI. DISPUTE RESOLUTION AND REDRESS

A. APPLICABLE LAW AND JURISDICTION

88 Business-to-consumer cross-border transactions, whether carried out electronically or otherwise, are subject to the existing framework on applicable law and jurisdiction.

89 Electronic commerce poses challenges to this existing framework. Therefore, consideration should be given to whether the existing framework for applicable law and jurisdiction should be modified, or applied differently, to ensure effective and transparent consumer protection in the context of the continued growth of electronic commerce.

90 In considering whether to modify the existing framework, governments should seek to ensure that the framework provides fairness to consumers and business, facilitates electronic commerce, results in consumers having a level of protection not less than that afforded in other forms of commerce, and provides consumers with meaningful access to fair and timely dispute resolution and redress without undue cost or burden.

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B. ALTERNATIVE DISPUTE RESOLUTION AND REDRESS

92 Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.

93 Businesses, consumer representatives and governments should work together to continue to use and develop fair, effective and transparent self-regulatory and other policies and procedures, including alternative dispute resolution mechanisms, to address consumer complaints and to resolve consumer disputes arising from business-to-consumer electronic commerce, with special attention to cross-border transactions.

94 Businesses and consumer representatives should continue to establish fair, effective and transparent internal mechanisms to address and respond to consumer complaints and difficulties in a fair and timely manner and without undue cost or burden to the consumer. Consumers should be encouraged to take advantage of such mechanisms.

95 Businesses and consumer representatives should continue to establish co-operative self-regulatory programs to address consumer complaints and to assist consumers in resolving disputes arising from business-to-consumer electronic commerce.

96 Businesses, consumer representatives and governments should work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost or burden to the consumer.

97 In implementing the above, businesses, consumer representatives and governments should employ information technologies innovatively and use them to enhance consumer awareness and freedom of choice.

98 In addition, further study is required to meet the objectives of Section VI at an international level.

99 VII. PRIVACY

100 Business-to-consumer electronic commerce should be conducted in accordance with the recognised privacy principles set out in the OECD Guidelines Governing the Protection of Privacy and Transborder Flow of Personal Data (1980), and taking into account the OECD Ministerial Declaration on the Protection of Privacy on Global Networks (1998), to provide appropriate and effective protection for consumers.

101 VIII. EDUCATION AND AWARENESS

102 Governments, business and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision-making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities.

103 Governments, business, the media, educational institutions and consumer representatives should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks.

104 Governments, consumer representatives and businesses should work together to provide information to consumers and businesses globally about relevant consumer protection laws and remedies in an easily accessible and understandable form.

PART THREE - IMPLEMENTATION

To achieve the purpose of this Recommendation, Member countries should at the national and international level, and in co-operation with businesses, consumers and their representatives:

review and, if necessary, promote self-regulatory practices and/or adopt and adapt laws and practices to make such laws and practices applicable to electronic commerce, having in mind the principles of technology and media neutrality;

encourage continued private sector leadership that includes the participation of consumer representatives in the development of effective self-regulatory mechanisms that contain specific, substantive rules for dispute resolution and compliance mechanisms;

encourage continued private sector leadership in the development of technology as a tool to protect and empower consumers;

promote the existence, purpose and contents of the Guidelines as widely as possible and encourage their use; and

facilitate consumers' ability to both access consumer education information and advice and to file complaints related to electronic commerce.

PART FOUR - GLOBAL CO-OPERATION

In order to provide effective consumer protection in the context of global electronic commerce Member countries should:

Facilitate communication, co-operation, and, where appropriate the development and enforcement of joint initiatives at the international level among businesses, consumer representatives and governments.

- 115 Through their judicial, regulatory, and law enforcement authorities co-operate at the international level, as appropriate, through information exchange, co-ordination, communication, and joint action to combat cross-border fraudulent, misleading and unfair commercial conduct.
- 116 Make use of existing international networks and enter into bilateral and/or multilateral agreements or other arrangements as necessary and appropriate, to accomplish such co-operation.
- 117 Work toward building consensus, both at the national and international levels, on core consumer protections to further the goals of enhancing consumer confidence, ensuring predictability for businesses, and protecting consumers.
- 118 Co-operate and work toward developing agreements or other arrangements for the mutual recognition and enforcement of judgments resulting from disputes between consumers and businesses, and judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct.

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