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DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY  
COMMITTEE ON CONSUMER POLICY

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## DRAFT RECOMMENDATION OF THE COUNCIL CONCERNING GUIDELINES FOR CONSUMER PROTECTION IN [THE CONTEXT OF ELECTRONIC COMMERCE]

*Delegates to the Committee on Consumer Policy will find attached the latest draft of the "Guidelines for Consumer Protection in the Context of Electronic Commerce." This draft was prepared by the Secretariat taking into account the work and discussions of the Project Team.*

*Delegates are requested to e-mail (or fax) comments to the Secretariat no later than Friday, May 1, 1998 [Attention: Ms. Laurie Labuda, e-mail: [laurie.labuda@oecd.org](mailto:laurie.labuda@oecd.org), fax: +33 1 45 24 93 32].*

For further information on this document please contact Ms. Laurie Labuda (e-mail: [laurie.labuda@oecd.org](mailto:laurie.labuda@oecd.org), phone: +33 1 45 24 96 24).

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**Draft Recommendation of the Council Concerning  
Guidelines for Consumer Protection  
in [the Context of Electronic Commerce]**

October ---, 1998

THE COUNCIL,

HAVING REGARD TO:

(1) The Convention on the Organisation for Economic Co-operation and Development of 14 December 1960, in particular articles ---;

RECOGNISING:

(2) That global information and communication networks offer substantial consumer welfare benefits, convenience, and the opportunity for economic growth by making available a wider range of goods, services and information at a lower cost, and expanded access to the worldwide marketplace;

(3) That business-to-consumer commerce conducted over global networks -- though at present relatively modest in volume -- is expected to grow exponentially over the next few years;

(4) That the number of direct consumer transactions involving businesses located in countries other than that of the consumer without the intervention of intermediaries based in the consumer's jurisdiction will expand exponentially;

(5) That commercial activities conducted over global networks are a form of distance selling and, as a consequence, transparent and effective consumer protection -- including clear disclosure and adequate remedies -- is a key element to develop consumer confidence and trust in the global marketplace;

(6) That the current legal and self-regulatory framework which applies to commercial activities conducted over global networks may, in some cases need to be adapted to take into account the special characteristics of global information and communication networks;

(7) That the low cost of setting up commercial operations on global networks is encouraging the participation of a number of new businesses that may be uninformed of the consumer protection regulations that apply to their operations; and that both consumers and businesses should be aware of their rights and obligations in the electronic marketplace;

(8) That international co-operation between governments, and between governments, business, consumers, and their representatives, is a necessary prerequisite to achieve an effective and harmonised response to the challenges posed by global communications and information networks; and

(9) That governments, businesses, consumers, and their representatives all have a role to play in gaining consumer confidence and providing consistent means of consumer protection in the electronic marketplace;

RECOMMENDS THAT MEMBER COUNTRIES:

- (10) Take steps to implement the Guidelines contained in the Annex to this Recommendation, which is an integral part hereof;
- (11) Act in accordance with these Guidelines in their dealings with both Member and non-Member countries;
- (12) Invite non-Member countries to endorse and implement the Guidelines;
- (13) Urge businesses and their representatives to implement such aspects of these Guidelines related to them;
- (14) Consult, coordinate, and co-operate among themselves, with non-Member countries, businesses, consumers, and their representatives in developing the regulatory and self-regulatory mechanisms that will comprise the framework for effective implementation of these Guidelines;
- (15) Widely disseminate these Guidelines to all relevant governmental departments and agencies, to all sectors of industry involved in electronic commerce, to consumer representatives and other relevant public interest groups; and
- (16) [Encourage businesses, consumers, and their representatives to take an active role in promoting the implementation of the Guidelines, including at the international level.]

*Annex to the Draft Recommendation of the Council  
Concerning Guidelines for Consumer Protection  
in [the Context of Electronic Commerce]*

**DEFINITIONS**

For the purposes of these Guidelines:

(17) **Electronic Commerce** - Any use of electronic networks and technology for commerce and other economic activity (including the use of electronic communication as the medium through which goods, services and/or software of economic value can be designed, produced, advertised, catalogued and inventoried, purchased, delivered and/or accounts settled.)<sup>1</sup>

(18) **Consumer** - A natural person who seeks, acquires or uses goods, services and/or software for personal, family or household use.<sup>2</sup>

(19) **Business** - Any natural or legal person or entity who deals or purports to deal in the goods, services and/or software involved in the transaction either with the consumers themselves or through an agent

(20) **Goods** - Includes all items, either physical or digital, purchased by a consumer.

(21) **Services** - Any performance, online or off-line, by a business over global networks for the benefit of a consumer.

(22) **Software** - A computer program, any informational content included in the program, and any supporting information provided by a licensor as part of the transaction.<sup>3</sup>

(23) **Computer Program** - A set of statements or instructions to be used directly or indirectly for achieving a particular result.<sup>4</sup>

(24) **“Cooling-off” Rule** - The right to withdraw from a contract within a specified number of days without penalty<sup>5</sup>

(25) **Chargeback** - A facility enabling a cardholder who paid for goods or services to dispute certain or all aspects of the transaction through the payment card issuer.

(26) **Good Faith** - Honesty in fact and observance of reasonable commercial standards of fair dealing.

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<sup>1</sup> GIIC Sept. 8, 1997/v1.5 GIIC Recommendations for Promoting the Use of Electronic Commerce  
Definition of Electronic Commerce

<sup>2</sup> US CFR

<sup>3</sup> US UCC

<sup>4</sup> US Copyright

<sup>5</sup> Council Directive 95/577/EEC

## **GENERAL PRINCIPLES**

### **(27) I. EQUIVALENT PROTECTION**

*(28) The same level of protection provided by the laws and practices that apply to other forms of commerce should be afforded to consumers participating in commercial activities through the use of global networks.*

(29) Governments should ensure that laws and practices that apply to other forms of commerce are afforded to consumer engaging in electronic commerce.

(30) Businesses should act according to good faith business dealings and fair commercial practices as required by existing laws, conventions and self-regulatory practices, in their commercial relations with consumers on global networks.

### **(31) II. ESSENTIAL INFORMATION**

*(32) Clear information about the identity of the business engaged in electronic commerce and the offered goods, services and/or software should be provided to consumers in a language they [confirm to] understand.*

(33) Businesses should provide consumers with information about their enterprise which should include, but not necessarily be limited to:

(34) the name of the company or trading entity;

(35) the physical location of the [business] involved in the interaction (including street and/or postal box, city and country); and

(36) explicit notice as to any geographical market limitations.

(37) Businesses should provide consumers with clear and specific information about the main characteristics of the offered goods, services and/or software.

(38) Governments, businesses and their representatives should work to develop easy access to certified commercial information related to businesses that engage in electronic commerce over global networks.

(39) Businesses should be encouraged to use interactive technologies to confirm a consumer's ability to understand the language used, and should use that same language from the delivery of essential information through the conclusion of the interaction [taking reasonable steps to present this information in multiple languages.]

(40) **III. CONTRACT FORMATION**

(41) *Complete information related to the offer, stated in a clear and conspicuous manner and in the same language as the one used to present the essential information, should be provided to consumers. Consumers should be provided with effective mechanisms to express unambiguous consent to the contract and should also be afforded an appropriate “cooling off” period.*

**OFFER**

(42) Businesses should provide consumers with information which should include, but not necessarily be limited to:

(43) full purchase price, including: currency, delivery, postage and handling, insurance, and a separate notice informing consumers as to whether any or all consumer taxes and duties are included];

(44) length and validity of the offer;

(45) terms, conditions, and methods of payment, including any available credit options;

(46) commercial registration information including those required by the law under which the business operates;

(47) any restrictions, limitations or conditions of purchase applicable to goods, services and/or software, including parental/guardian approval requirements for minors and other vulnerable populations;

(48) any safety or care warnings required by law and, where necessary, instructions for proper use;

(49) conditions related to return, exchange, cancellation and/or refund policy information, and any applicable warranty provisions;

(50) how and where complaints and inquires can be submitted;

(51) any specific contractual information required according to applicable law and jurisdiction; and

(52) choice of law and choice of forum provisions.

(53) Businesses should provide consumers with additional information with respect to digitized goods, services and/or software ordered and delivered over open networks, including, but not necessarily limited to:

(54) specific information as to the characteristics of the goods, services and/or software and the operating system and equipment requirements necessary to efficiently utilise the goods, services and/or software;

(55) any costs associated with the transmission;

(56) the terms and conditions of any applicable software license agreement; and

(57) any specific limitations or conditions on the return of digital information.

(58) Businesses should provide consumers with written confirmation of the terms of the contract [in a durable medium], available and accessible either during the performance of the contract, or at the latest, at the time of delivery.

**ACCEPTANCE**

(59) Businesses should only rely on a consumer consent given in a clear and transparent manner and should develop mechanisms to support a process enabling consumers to clearly express their

intent to purchase goods, services and/or software. This process could include the following separate steps:

- (60) [selection] [choice] of goods, services and/or software;
- (61) agreement to the full price as stated in the offer, terms, conditions and methods of payment;
- (62) acceptance of any available credit options and conditions;
- (63) other aspects of the contract; and
- (64) final agreement to purchase.

[(65) In developing the regulatory and self-regulatory mechanisms that will comprise the framework for electronic commerce, governments and businesses should take into account the potential use of electronic agents that may be selected or programmed to achieve a specific result on the consumer's behalf.]

(66) Governments should ensure that any terms and conditions that have not been presented to the consumer before the final offer is made, shall only be regarded as binding upon the consumer if subsequently accepted by him or her, or if otherwise provided by the law governing the transaction.

#### **COOLING-OFF RULES**

(67) Governments [should] adapt existing "cooling-off" rules as necessary to make them applicable over global networks.

#### **(68) IV. CHOICE OF LAW AND FORUM**

***(69) In order to benefit from a transparent and predictable legal environment over global networks, consumers should be aware of the law applicable to the contract and of the competent forum***

(70) Governments should ensure that parties in the contract choose the applicable law provided, however, that the law specified is either:

- (71) the law of country in which the consumer resides when the contract is formed;
- (72) the law of the country in which, under the contract between the parties, the goods, services, and/or software are to be received by the consumer or a person designated by the consumer; or
- (73) the law of the country where the business involved in the transaction is physically located.

(74) In the latter two cases, governments should reaffirm that the choice of law made by the parties should not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he resides when the contract is formed.

(75) Governments should ensure that parties in the contract choose the forum of adjudication provided, however, that the country specified is either:

- (76) the country in which the consumer resides at the time of the transaction; or
- (77) the country in which, under the contract between the parties, the goods, services, and/or software are to be received by the consumer or a person designated by the consumer.

**(78) V. SECURITY MECHANISMS**

***(79) The development and use of internationally interoperable security and authentication mechanisms for consumer, business and transaction information should be actively promoted.***

(80) Governments and businesses should work to ensure the security of information and communications systems, and provide mechanisms for authenticating data, as a fundamental element of consumer protection in the electronic marketplace. Such efforts could include, but should not necessarily be limited to:

(81) [developing][enhancing] security for information and communications systems to protect the availability, confidentiality and integrity of the systems and the data that is transmitted and stored on them, and to form a basis for secure and reliable transactions over global networks; and

(82) [developing][enhancing] authentication mechanisms to establish the validity of a claimed identity of a user or the capacity of the parties to fulfill their contractual obligations, device or other entity in an information or communications system, and to reduce the likelihood of fraudulent and misleading conduct over global networks.

(83) [Governments should implement the necessary legal framework -- and both governments and business should adopt interoperable technical standards to support the development and use of effective security and authentication mechanisms.]

**(84) VI. CONSUMER COMPLAINTS, REDRESS AND DISPUTE RESOLUTION**

***(85) Effective mechanisms for complaints, redress and dispute resolution should be made available to consumers.***

(86) Businesses should establish internal procedures that respond to consumer complaints and difficulties:

(87) within a reasonable time;

(88) at a charge, if any, that is not excessive;

(89) in a reasonable manner; and

(90) in a form that is readily intelligible to the consumer.

(91) Businesses should develop procedures that provide effective means of consumer redress. Such procedures could include but should not necessarily be limited to:

(92) the registration and acknowledgment of consumer complaints;

(93) the registration and processing of consumer requests to cancel a transaction;

(94) the means for consumers to return both physical and digital goods; and

[(95) a notice to consumers regarding any available third party dispute resolution mechanisms.]



(96) Governments [should] encourage self-regulatory efforts that establish effective third party procedures for resolving consumer disputes which could include:

(97) procedures that are timely, mutually convenient and acceptable to both parties in the dispute;

(98) [a stipulation that] reasonable costs of the procedure will be paid by the [business]; and

(99) the possibility for either party to seek legal remedies should the process fail to resolve the dispute.

(100) Governments should update, as necessary, the rules and procedures governing dispute resolution mechanisms, such as small claims courts, consumer complaints boards, and other mechanisms. These rules and procedures should be made available, both technically and practically for use on global networks.

(101) Governments [should] encourage the implementation of international “chargeback” mechanisms.

[(102) Governments should encourage the designation of national contact points for consumer complaints and encourage their international co-operation and communication.]

### **(103) VII. EDUCATION AND AWARENESS**

**(104) *Education and awareness about practices, regulations and use of technology [concerning] commercial activities over global networks should be provided to consumers.***

(105) Governments [should] work with business and consumer representatives to educate both consumers and [businesses] that engage in electronic commerce on global networks as to their respective rights and obligations.

(106) Governments [should] facilitate informed consumer participation and promote consumer confidence in electronic commerce through education, including:

(107) adapting existing disclosure requirements to the context of global networks;

(108) devoting resources to consumer education, making use of novel methods made possible by the global networks in combination with more conventional methods; and

(109) making use of government resources by forming partnerships with businesses and consumers and their representatives.

### **(110) VIII. CODES OF CONDUCT**

**(111) *Meaningful and effective self-regulatory mechanisms should both establish broad principles and guidance, and include specific, substantive rules [for dispute resolution] and enforcement mechanisms to ensure compliance***

(112) Governments should encourage businesses, consumers, and their representatives to work together to devise self-regulatory solutions to consumer problems arising from electronic commerce.

(113) Codes of conduct should make adherence mandatory and, where there is a failure to comply, should include provisions outlining specific consequences. Such consequences should be independent from the liability a business would face for any misleading advertising or false and deceptive representations that it is in compliance with the codes. Specific self-regulatory consequences could include but should not necessarily be limited to:

(114) the cancellation of the right to use a certifying seal/logo; and

(115) disqualification from membership in an industry trade association.

## **(116) IX. INTERNATIONAL GOVERNMENT CO-OPERATION**

***(117) Governments should work co-operatively at the international level on all consumer issues related to electronic commerce.***

(118) Governments should promote opportunities for consumers to participate in the electronic marketplace, including:

(119) entering into [bilateral and multilateral] co-operation agreements, on the model of existing agreements, pledging co-operation in the development of a predictable and harmonised regulatory environment;

(120) examining confidentiality laws with a view to facilitating information sharing among agencies in different countries, while at the same time respecting the need to protect individual privacy;

[(121) maintaining databases of consumer complaints that may be accessed by law enforcement authorities from other countries, co-operating with other governments to establish international databases, and informing consumer protection organisations to the extent permitted by law; and]

(122) facilitating communication among law enforcement officials located in different countries and time zones through systems that take advantage of the global communications and information network.

## **(123) X. PRIVACY**

***(124) Electronic transactions should be conducted in the context of recognised privacy principles, in particular the 1980 OECD Guidelines for the Protection of Privacy and Transborder Flow of Personal Data.***

(125) Governments, businesses, consumers and their representatives should work to ensure that commercial activities over global networks are consistent with the effective implementation of the OECD Privacy guidelines with respect to global information networks.