

TACD

TRANS ATLANTIC
CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE
DES CONSOMMATEURS

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DEVELOPING A CODE OF PRACTICE FOR ELECTRONIC TRADERS

Consumers must have effective protection when shopping on the Internet. Consumers should not be less well protected than they are when using traditional forms of commerce and effective self-regulation is one way of achieving this.

Definitions of self -regulation vary widely and many countries have a mix of both self-regulatory and co-regulatory schemes. Self-regulation is not appropriate for all circumstances. In the United States, and other countries, it has failed in the area of privacy where self-regulation is promoted as a substitute for Government regulation, but offers no protection to consumers.

Co-regulation is self-regulation operating within a legislative framework so that there is a legal back up available to consumers where a voluntary scheme fails.

Currently, multitudes of different codes of conduct are being developed, governing different aspects of electronic commerce. These can be broad based codes covering all aspects of on-line trading, to narrow based or sectoral codes covering specific aspects of on-line trading, such as privacy or authenticity. A proliferation of codes is confusing to consumers. In an ideal world there would be a minimum number of internationally accepted common codes of practice and accreditation (certification) bodies for electronic commerce.

Neither self-regulation nor co-regulation should be viewed as a substitute for laws to protect consumers in e-commerce, but as a complement to these measures, encouraging companies to follow good business practices and offering alternative forms of redress. Consumers should not have to waive their legal rights to take advantage of redress mechanisms offered under such schemes.

All codes are meaningless unless they are effective and complied with by members. Most importantly for consumers, codes governing e-commerce must lay down clear, accessible on-line complaints procedures. In addition, by clicking on the trustmark (compliance symbol) displayed on the trader's website, the consumer should be able to access directly the code of practice and the body administering the code, and from that site to gain access to an on-line complaints form or help desk.

Guidelines for developing codes should include: -

Legislative 'backstop' powers for Governments or competition authorities to intervene where there are serious breaches of the code or where it is continually flouted.

A strong independent element must be involved in the design of the scheme, which would include consulting consumer organisations/representatives from the outset.

Codes must be based on clear and intelligible statements of principle and measurable standards which address real consumer concerns and provide a high level of consumer protection.

If a code is operated by a trade or professional organisation it should have a separate institutional structure and governing body that should include consumer representatives.

Compliance must be monitored. Adherence to the code is essential and non-compliance must be dealt with effectively. There must be adequate, meaningful and commercially significant sanctions for non-observance.

There must be clear, accessible and well-publicised redress procedures, including cross border redress, where there is a breach of the code. An on-line complaints form should be available as the starting point for a complaints procedure against a code subscriber.

There must be a degree of public accountability. The scheme should be monitored and an independent audit carried out to assess its effectiveness, the results of which should be published. When action is taken against a participating business (ie. suspension or expulsion from a scheme) this should be made public.

The scheme must be well publicised, with maximum education and information directed at consumers and traders.

The scheme must have adequate resources and be funded in such a way that the objectives are not compromised.

The scheme must be regularly reviewed and updated in the light of changing circumstances and expectations.

TACD RESOLUTION:

1. TACD does not believe that self-regulation works in all circumstances. The most important example of this is in the area of privacy. TACD firmly believes that privacy rights must be legally protected as they are in the EU Data Protection Directive.
2. TACD further believes that co-regulation - where self-regulation is underpinned by legislation - is the best method of ensuring that codes of practice are effective. There must be legislative 'backstop' powers for Governments or competition authorities to intervene where there are serious breaches of the code or where it is continually flouted.

3. TACD believes that if codes are set up and seen to fulfil public interest objectives, there must be public measurement of this objective and there must be criteria how these codes are set up and evaluated.
4. TACD calls upon the EU and US to work together to establish a checklist for codes of practice, based on the above principles, and to consider the need for accreditation/certification bodies for electronic commerce.