

TACD

TRANS ATLANTIC CONSUMER DIALOGUE DIALOGUE TRANSATLANTIQUE
DES CONSOMMATEURS

DOC No: INFOSOC 37-08

DATE ISSUED: MARCH 2008

Charter of Consumer Rights in the Digital World

Digital technologies contribute to an improvement in the quality of people's lives in many ways. They create the preconditions for expanded participation in political, economic, social and cultural life which help sustain democratic institutions. They facilitate the free exchange of ideas – including across borders – and increase access to information. Digital technologies transform the way people use media. They also offer access to new services and enable new business models.

As is the case in the analogue world, however, it is important to ensure that there is a fair balance between the interests of consumers and providers of services. Mechanisms are required that enable consumers to effectively assert and protect their rights in the digital world and that provide protection from the damage caused by misuse and criminal attacks. Consumers should also be fully informed about specific risks and new threats so that they can enter the digital market as equal partners and make well-informed decisions.

The increasing significance of digital media for the modern economy requires a comprehensive consumer policy and the protection of consumer rights in the digital world. In our global society, there should also be fair and non-discriminative access to the multifaceted spectrum of forms of cultural expression in the spirit of the UNESCO convention on the protection of cultural diversity.

The Charter for Consumer Rights in the Digital World identifies the core rights that the members of TACD regard as indispensable to meeting the challenges presented by the digital world and the utilization of its potentials. These core rights are based on a wide range of TACD resolutions that have previously set out the interests of consumers in the digital world. They are the:

- 1. Right to access neutral networks**
- 2. Right to access digital media and information**
- 3. Right to secure networks and services**
- 4. Right to privacy and data protection**
- 5. Right to software interoperability**
- 6. Right to barrier-free access and equality**
- 7. Right to pluralistic media**

1. Right to access neutral networks¹

The Internet is an increasingly important source of information for consumers. It has become a basic means of communication for individuals and the most important means of access to knowledge and general information. The Internet has also become a platform for consumers' access to participate in the public, democratic debate.

There is a danger, however, that Internet service providers (ISPs) may block or degrade the access of consumers to certain content and applications, or limit the types of equipment that can be attached to networks. Such behaviour can severely limit the usefulness of the Internet and frustrate consumers.

The TACD believes that consumers should have the *right to access neutral networks*. That means that consumers have the right to attach devices of their choice, the right to access or provide content, services and applications of their choice, and the right for this access to be free from discrimination according to source, destination, content and type of application.

The TACD therefore calls upon:

- Governments to recognise, promote and encourage principles of net neutrality.
- Regulators to assess the level of competition in broadband Internet access, and to take steps to ensure that consumers have continued access to a neutral network.
- Regulators to prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications, or devices.
- Telecommunications and competition regulators to require that ISPs and network providers provide fair and accurate information regarding Internet service plans, including average estimated speeds, any existing caps on bandwidth, and regarding content, services, applications or devices that may be blocked or degraded on their networks. ISPs and network providers should also detail their compliance with net neutrality principles and regulations.
- ISPs to provide consumers with information about limitations on Internet service plans, as well as any network management occurring on their networks and how that management affects access to particular content, service, application, or device. Such management should fall within the scope of legitimate network management.

2. Right to access digital media and information²

In the digital world, there should be a fair balance between the interests of consumers and providers of digital services. Digital Rights Management (DRM) systems, however, continue to be used to restrict the deployment of digital media to the clear disadvantage of consumers, prevent free competition and slow innovation. Furthermore, information about DRM systems is often hidden to consumers or incomprehensible. Consequently, consumers should have the *right to access digital media and information*.

DRMs should only be used under the following – cumulatively effective – conditions:

- The practical use of DRMs on the Internet must not generate unnecessary vulnerabilities with regard to consumers' equipment or personal information.
- User profiles must not be created. The anonymity of users of digital media must be protected.

- Copyright owners must not hinder consumers' use of digital media within the framework of prevailing legal prescriptions. This particularly applies to the right to make copies for private use and the right to transform content for private use.
- Because the relevant legal situation is often complicated, copyright infringements for non-commercial reasons must not be criminalized.
- The impact of DRMs on functionality should be limited to what is necessary to protect copyright and should not otherwise affect a consumers' use of content.
- The format of the storage medium must not be used for protectionist barriers that prevent consumers from exercising free choice and their legal rights. Consumers should be allowed to decide for themselves what player or platform they will use, and to move any content they have bought to any medium of their choice.
- Consumers should be allowed to circumvent DRMs if any of their usage rights are not respected.
- Copyright holders and providers of digital media must provide users at an early stage with comprehensive information regarding the scope of use permitted for digitalized and copyright-protected content. Enterprises must also provide fair, clear and comprehensible contractual conditions. These measures are required to ensure that consumer behaviour is legal and in line with market requirements and to avoid civil proceedings against copyright infringements.
- Consumers should have clear and "fair" rights to use digital material and not be penalized for simply moving with the times. The industry should develop new business options that are consistent with consumption patterns and meet consumers' needs.

3. Right to secure networks and services³

Consumer confidence in the security and reliability of the digital world is a decisive precondition for the intensive use of digital services. Ensuring such confidence requires the *right to secure networks and services*. Furthermore, measures for significantly increasing consumer awareness and competence in relation to data and system security should be provided.

The TACD calls for businesses to observe the following fundamental principles to provide secure networks and services:

- When choosing a security system, providers of Internet-based services must ensure that the risks to consumers are minimized as much as possible.
- Security must be integrated into the technology. That means that security should be the default setting.
- Internet access providers must ensure that access to online services and offerings is free of manipulation. This presupposes a high standard for the security and reliability of networks and services.
- The providers of Internet-based services must provide consumers of particularly sensitive online services such as online banking and online auctions with regular and timely information regarding current security risks and effective protective measures.
- Providers of digital products and services should be made legally accountable for losses as a result of damage caused by non-observance of appropriate security measures.

4. Right to privacy and data protection

In the digital world consumers are subject to far more intrusive data gathering by businesses and government than in the past. Moreover, as their personal information is collected, large organizations have become increasingly secretive. Personal information is also more often used for data-mining, behavioural targeting for marketing purposes, compiling personal name records and credit scoring. There is a risk that these developments undermine basic human rights of individuals to autonomy and control of their personal information. There is also a danger that security breaches and identity theft increase and new threats to trust and confidence in the digital marketplace emerge. Therefore, consumers should have the *right to privacy and data protection*.

The TACD calls for:

- Business and governments to be subjected to enforceable Fair Information Practices that give rights to consumers and impose responsibilities on organizations that collect and use personal data.
- Business and governments to use effective and updated technology to protect confidential personal data against unauthorized use.
- Business and governments to inform consumers of the measures they can take to protect their own data. Important in this context is information about the form, collection, processing and use of the relevant data.
- Business and governments to refrain from making the use of services or the claim to special offers contingent on agreement by the consumer to the use of his or her data for other purposes.
- Businesses to ensure that data about consumers is collected, processed and used only with their expressed and voluntary permission – acquired through an opt-in procedure – in so far as the use of this data is not obligatory for the direct settlement of a contract.
- Governments to ensure that programs to combat terrorism and organised crime do not undermine self-determination in terms of personal information and the protection of individuals' privacy.
- Providers of broadcast and media services as well as governments to preserve the preconditions for free and anonymous use of media in the future.

5. Right to software interoperability⁴

Software is a key driver for Information and Communication Technologies. It acts as a glue between the various elements that ultimately deliver the required services to consumers. Yet, from the consumer perspective the usefulness of software is closely related to its ability to work with other software. Therefore, software interoperability is of major importance. Software interoperability ensures that different programmes and applications can communicate or transfer data.

For consumers software interoperability is important since interoperability facilitates, *inter alia*, access to better and more suitable software products and online services; it lowers switching costs; it safeguards data (such as documents, pictures or videos) over a long period of time; it makes more likely that hardware can be used for longer periods of time.

TACD fears, however, that businesses limit the interoperability of their software and devices. The TACD therefore calls on governments to:

- Analyse with a clearly defined consumer welfare perspective efficiency, cost, flexibility of all tools available to achieve interoperability.
- Close gaps in the legal framework that hinder the promotion of interoperability.
- Promote the creation and adoption of non-proprietary hardware and software interfaces through a combination of policy, legislation, regulation and procurement policies in addition to voluntary standards development activities.
- Adopt and make use of traditional ex-ante regulatory approaches. Apply effectively, enforce vigorously and adapt where necessary traditional consumer protection laws to the digital environment by amending information requirements (for example through clear/simple warning labels on products to signal lack of interoperability), adapting unfair commercial practices laws, clarifying unfair contract terms and sales guarantees legislation.
- Promote open standards through procurement.

6. Right to barrier free access and equality

All people within a society, irrespective of their social status, worldviews or age group and irrespective of any disabilities they may have are entitled to participate in the life of that society. They have a right to the free exchange of information and opinion and to individual integration in the world of work. The precondition for this is the *right to barrier free access and equality*. That means that access to digital services should be provided for all consumers irrespective of their personal and/or technical possibilities. Moreover the complexity of the digital world needs to be reduced and its legal and technical aspects need to be made more manageable for all consumers.

TACD calls on businesses and governments to ensure barrier-free access and equality by:

- National governments and European institutions to carefully stimulate the provision of barrier free services by strengthening existing legislation (such as public procurement rules and accessibility requirements in public tendering) and to introduce a horizontal legislative framework addressing the accessibility of ICT products and services not covered by sectoral legislation.
- Making digital products and services accessible for use by people with disabilities based on national, regional or international standards and other specifications.
- Creating websites that comply with the accessibility guidelines of the World Wide Web Consortium (W3C).
- Creating digital products and services that are easy to use by people of all ages, levels of education, and social status, and providing easy to understand instructions and tutorials for their use.

7. Right to Pluralistic Media

The Internet offers a wonderful platform for innovation, growth, and the ability of people to express their views. New forms of media are emerging that challenge old paradigms and enable broader public participation.

At the same time, dominant Internet firms are moving to consolidate their control over the Internet, to increase the profiling of Internet users, and to manipulate the information and

services that consumers receive. Two of the three largest media firms in the world are Internet companies, not traditional media companies.

TACD believes that consumers have the *right to pluralistic media*. It is vitally important for Internet users and governments to develop a better understanding of the challenge industry consolidations pose to the open Internet and specifically how dominant Internet firms are able to leverage their position in one market sector to discourage competition other market sectors.

TACD calls upon governments to:

- Assess the impact that the growing concentration of Internet firms will have on the growth of the Internet and the future of the Internet economy.
- Ensure that competition law is enforced paying particular attention to the increasing vertical integration in this sector.
- Establish privacy and consumer safeguards as a central requirement in the context of merger review for Internet firms.

¹ See also: Resolution on Net Neutrality (Infosoc-36-08) and DRAFT Resolution on The role of Internet Service Providers (ISPs) in mediating online content and communications (IP-04-08)

² See also: Resolution and Background Paper on Digital Rights Management, The Sequel (IP-03-07): <http://www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=307> and Resolution on Digital Rights Management (IP-01.05): <http://www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=275>

³ See also: Resolution on Internet Security (Infosoc-34-07): <http://www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=310> and Resolution on Identity Theft, Phishing and Consumer Confidence (Infosoc-33-07): <http://www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=306>

⁴ See also: DRAFT Resolution on Software Interoperability and Open Standards (Infosoc- IP-35-08)