

GLOBAL BUSINESS DIALOGUE ON ELECTRONIC COMMERCE



CONSUMER CONFIDENCE

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Introduction

The GBDe believes that building consumer confidence is a key issue for the development of electronic commerce, and that both business and governments have a responsibility to foster it. This chapter examines a number of actions that can be taken by both business and government to build consumer confidence and to increase the willingness of consumers to engage in electronic commerce. Many of these issues are discussed in more detail, with the same conclusions, in other chapters, but are dealt with here as well, because of their particular importance for creating consumer confidence. Moreover, most of the recommendations are based on many individual or collective initiatives, already developed or in the process of being developed by business and business associations.

Recommendations

Trust and Transparency

Trust

Business will continue to develop codes of conduct covering areas of concern to consumers (including such topics as transparency and identification, data protection, security of transactions, authentication, commercial communications, distance selling, cancellation policies, and redress). These codes should also provide mechanisms for enforcement and monitoring/surveillance. Similarly, third party certification systems that provide “seals” and “trustmarks” to certify that vendors comply with a defined code of conduct and specified enforcement provisions should be developed through competition in the market and should be widely used by Internet vendors.

Governments should support the development of self-regulatory initiatives and permit competition among them, rather than favoring one over another or attempting to regulate the areas covered by such initiatives. Governments should highlight the variety and importance of available options.

Transparency

Businesses engaged in electronic commerce should build consumer confidence through the creation of adequate transparency. This could include the provision of comprehensive and accurate information about the site and the transaction, the identity of the merchant, the contact details, any authorization or certification scheme the business is subject to, and any codes of conduct it adheres to.

Governments should support the implementation of self-regulatory mechanisms by business to promote transparency to consumers as the best way to contribute to consumer confidence and awareness. As worldwide harmonization is unlikely to be achieved regarding transparency requirements, it would be counterproductive to pursue this goal through legislation. On the other hand, governments do have a role in ensuring a high degree of transparency regarding the conditions for using the Internet. To reduce costs for the consumer, governments should promote free and fair competition in the provision of Internet access services.

Unwelcome content¹

Business will continue to build consumer confidence through the further development of technologies which allow individual screening of the Internet, and through voluntary, self-regulatory codes allowing for respect of consumer choice on content. In particular, business should offer consumers marking or rating systems in line with their expectations.

Governments should undertake, sponsor and encourage education of the public with regard to the possibilities offered by screening and filtering technologies to protect consumers against unwelcome content.

Information and education

Industry associations should put a high priority on informing their members about electronic commerce and the need to build consumer confidence in electronic commerce. Individual businesses should promote consumer awareness about the positive potential of electronic commerce, and provide guidance on how best to complete transactions.

Governments and consumer groups should establish information and education centers for business and consumers regarding the use of the Internet for commercial transactions. Educational institutions should ensure that pupils learn to use the Internet.

Security and Privacy

Protection of personal data²

Business should adhere to the GBDe set of principles regarding the protection of and the access to personal data of consumers.

¹ See chapter on Content/Commercial Communications

² See chapter on Protection of Personal Data

Governments should actively support the various voluntary and self-regulatory initiatives currently being developed in the field, including the GBDe set of principles on data protection, and contribute to their international recognition.

Key escrow, encryption and payment systems³

Business should continue to respond to the need to offer electronic commerce services in a secure manner, for instance, by creating and using payment systems which offer the degree of security appropriate to the circumstances of the transaction. Business should keep in mind that the conditions of payment and reimbursement can also play an important role in enhancing consumer confidence in payment systems.

Governments should provide, harmonize, or recognize mutually the minimum necessary legal framework, such as the establishment of the legal effect of electronic signatures. They further should refrain from introducing restrictions on the use of and the trade in encryption technologies (including advanced technologies), nor promote key escrow systems either expressly or indirectly. Law enforcement access should only be permitted with the consent of the key owner or by court order.

Unsolicited commercial communications⁴

Business should continue to take this consumer concern seriously, and to develop guidelines or codes of conduct regarding unsolicited commercial communications. Business should also develop systems that enable consumers to express a desire what commercial communications they wish to receive (“opt-out”).

Governments should encourage voluntary self-regulatory initiatives in this field and ensure that existing or future regulations on unsolicited commercial communications are internationally-compatible.

Applicable Law and Choice of Forum⁵

Alternative dispute resolution mechanisms (ADR)

Business should cooperate with governments to provide consumers with efficient remedy mechanisms by increased use and legal recognition of alternative, simple, timely and inexpensive dispute resolution mechanisms through arbitration, mediation, and conciliation or self-regulation.

Governments should realize that nationally-applicable consumer protection laws do not fully provide consumer confidence. While eventual recourse to the court system must

³ See issue paper on Protection of Personal Data

⁴ See chapter on Content/Commercial Communications

⁵ See chapter on Jurisdiction

remain available, consumer's interests might be satisfied more appropriately by business-developed remedial mechanisms mentioned above. Hence, they should inform consumers about the availability and advantages of ADR mechanisms.

Applicable law

Business should provide consumers with accurate and easy-to-understand information related to the terms of on-line transaction. In the absence of a contractual choice of law, consumers can still exercise a choice of applicable law by selecting a vendor accordingly.

Governments should provide easy-to-understand information on-line regarding their law, including in particular provisions on consumer protection. They should also adopt policies that promote, or at a minimum do not infringe upon, freedom of contract, and do not prevent consumers from choosing applicable law by selecting offers of specific vendors. In the absence of other obvious and compelling criteria, and in particular in transactions involving multinational companies, with regard to civil damage the law of the "main establishment" of the vendor should be used according to the "country of origin" principle.

Choice of forum

Business should not exclude the possibility for consumers to go, eventually, to court if out-of-court mechanisms have failed to settle a given complaint.

Governments should, in the absence of a choice of national forum provisions in a contract or in the case of a civil claim based on an alleged violation of a non-contractual obligation, permit the defendant to choose the forum, whether a consumer or a business entity.

Convenience

Internet domain names

Business should use domain and web site names which are not misleading and which enable the consumer to quickly locate the desired web site.

Governments could play a role in creating awareness of the new global body responsible for the assignment of domain names, the Internet Corporation for the Assignment of Names and Numbers, ICANN.

Cost and user-friendliness

Business should continue to create and develop user-friendly hardware and software apt for the purposes of electronic commerce.

Governments should liberalize markets to reduce the costs of using the Internet.

Language

Businesses should be able to establish a Web site whenever they want and in whatever language they choose, while at the same time making possible communication in the languages of the targeted consumers. New software that makes the communication of specific messages (e.g., the ordering of goods) largely independent of the languages used on both ends (consumer and vendor) should facilitate this task.

Governments should not impose mandatory language requirements. Competition will oblige business engaged in electronic commerce to increasingly offer their products in the languages of all relevant markets. This should neither be hindered nor forced.