



UNGCP Briefing on Electronic Commerce

1. About the UN Guidelines for Consumer Protection

The United Nations Guidelines for Consumer Protection (UNGCP) were adopted by the UN in 1985 and act as an international reference point of the consumer movement. They give important legitimacy to the principles of consumer rights and practical support and guidance for developing national consumer protection legislation.

The UN Guidelines for Consumer Protection are available in six languages:

[Arabic](#) [Chinese](#) [English](#) [French](#) [Russian](#) [Spanish](#)

The guidelines best known section is Art 3, the list of '*legitimate needs*' of consumers, which currently reads as follows:

- (a) The protection of consumers from hazards to their health and safety;*
- (b) The promotion and protection of the economic interests of consumers;*
- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;*
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;*
- (e) Availability of effective consumer redress;*
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them*
- (g) The promotion of sustainable consumption patterns;*

For some years now, CI has 'translated' the list into our proposed clear consumer rights as follows:

- the right to the satisfaction of basic needs
- the right to safety
- the right to be informed
- the right to choose
- the right to be heard
- the right to redress
- the right to consumer education
- The right to a healthy environment.

During the current revision process we have proposed amendments and addition to the legitimate needs as follows:

To guideline 3 f) we propose the addition of: '*and for those views to be dealt with in an equitable manner*'.

We also propose two new *'legitimate needs'* as follows:

New 3 h): *Access to knowledge; that is, more equitable public access to the products and tools of human culture and learning; and*

New 3 i): *Guaranteed access to essential goods and services;*

These amendments are to update the UNGCP, and indeed our own position, in the light of new developments in access to knowledge and the role of consumer associations, and to bring the guidelines closer to the 'right' to 'satisfaction of basic needs' on which the legitimate needs are too vague.

The guidelines are part of the work of the United Nations Conference on Trade and Development (UNCTAD) and their revision is being led by the Competition Law and Consumer Protection Policy section. In 1999, the guidelines were updated with a new section on sustainable consumption and production (section G) to reflect environmental concerns. In 2015 the guidelines will be updated again, this time incorporating new areas. CI will be lobbying on this and other areas of the guidelines.

2. CI's rationale for working on the revision of the UN Guidelines for Consumer Protection

CI's work on this is an essential part of our international advocacy. This revision presents an opportunity to improve consumer protection for billions of consumers around the world.

Consumer Justice and Protection is a Priority Issues Programme for Consumers International. The revision of the Guidelines is a key part of that programme for 2014.

3. Background and timetable

1985 UN Guidelines for Consumer Protection first adopted

1999 Last revision of Guidelines

2012 (July) UN conference on competition & consumer protection: CI make case for inclusion of financial services and privacy in text and access to basic goods and services in *legitimate needs*.

2013 (July) UN conference on 2015 revision

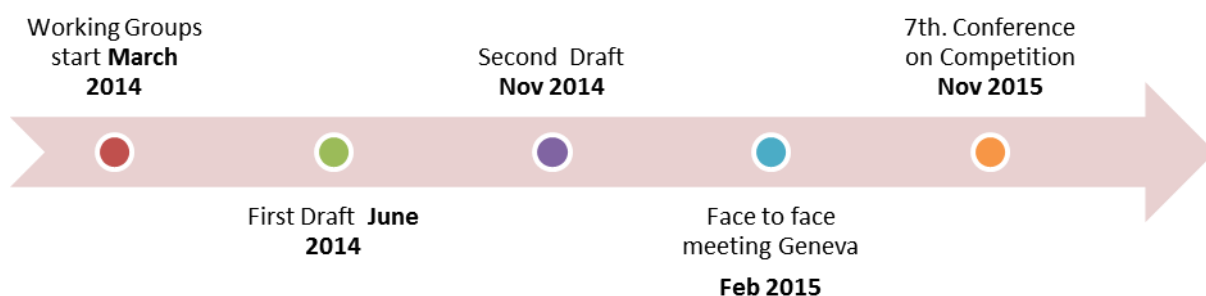
2013 (December) UN establishes four working groups (Financial services, E-commerce, Implementation, Other Issues) to draft the 2015 revisions.

2014 (March) working groups start their work

2014-15 CI contributes to the 1st draft (June 2014) and 2nd draft (November) of the revised guidelines and lobbies for improved consumer protection on all four working groups.

2015 (Jan) UN meeting in Geneva with UNCTAD

2015 Secretariat report presented to the 7th UN Review Conference. Following this the final revision of the guidelines are expected to be adopted by the General Assembly in 2016.



4. CI's Activities

CI will participate in all 4 working groups. CI will:

- **Contribute to the redrafting** of the Guidelines text through the working groups.
- **Lobby** the chairs and members of the working groups.
- **Support members** with webinars, briefings and other materials to support member lobbying of their national delegations.

5. Relevance of UN Guidelines for Consumer Protection to electronic commerce

Electronic Commerce will be included in the Guidelines for the first time. Although many aspects of electronic commerce are already included in the guidelines under general principles and specific provisions related, among others, to trade, commerce, contracts, the impact of this modality of electronic shopping and exchange of information is growing faster and has its own needs for specific regulation.

CI has a clear position on the Guidelines developed with members and has published a separate 110-page publication titled *Updating the UN Guidelines for Consumer Protection for the Digital Age* (<http://www.consumersinternational.org/media/1353300/updating-ungcp.pdf>) which details our proposals for new measures covering e-commerce and related areas of importance to consumers in the digital age. This publication can be consulted for further information.

6. Membership of the electronic commerce working group

Following the UN conference in Geneva in July 2013, the following countries volunteered to join the electronic commerce working group:

Brazil, Benin, Bulgaria, Chile, CARICOM, Dominican Republic, Korea, Malaysia, Morocco, Oman, Peru, Papua New Guinea, Seychelles, Turkey, USA, CI, and ICC.

It should be noted that membership of all working groups is open to all UN Members and accredited Organisations including Consumers International. The membership of the Groups may evolve over the consultation period (until the final text is agreed). The Electronic Commerce working group is chaired by France, after the USA declined its prior nomination during the July's meeting.

7. CI Recommendations (Electronic Commerce) overview

CI's recommendations for revision of the UN Guidelines are based on consultation with CI members. The detailed text changes are set out in tracked changes in Annex A of our evidence to the Ad hoc expert group meeting in Geneva in July 2013. It can be found here: http://unctad.org/meetings/en/Contribution/IGE2013_UNGCP_CI_en.pdf

Consumers International, in its submission to UNCTAD, noted that it should be bear in mind that subject-specific amendments (as for Financial Services and Electronic Commerce) may trigger changes elsewhere in the Guidelines and that amendments or additions made to one part of the text will frequently have repercussions elsewhere.

A number of the key provisions of the Guidelines are located in a proposed new section titled “*Ecommerce and digital products and services*”, but as suggested above, we do not consider that there is any logical and consistent way to separate out the various issues that confront the consumer in the digital age into a single silo called “e-commerce”.

For a clearer reading, we present recommendations for Electronic Commerce in order through the text of the guidelines. We recommend going through the comparative table we prepared to understand better the changes. We refer to the numbered paragraphs of the Guidelines as ‘old para’ when we refer to the existing paragraphs of the guidelines’ text; ‘new para’ when we refer to the paragraphs of our proposal.

It must be noted that the paragraph numeration changed in relation to the existing text due to our addition of new insertions, paragraphs and sections.

CI Recommends:

CI have proposed an entire new section (new section H) devoted to E-commerce and digital products and services. This would come between old paras 55 & 56 and we would number them as new paras 66-72.

66. 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.

67. Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves, the goods or services offered, and the terms and conditions on which they are offered, to enable consumers to make an informed decision about whether to enter into the transaction.

68. 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 to be purchased; 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.

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

70. Digital content products should be offered on terms equivalent to those sold in other formats, unless the consumer is clearly informed that different terms apply. This includes the normal incidences of product ownership, such as permanent possession, privacy of use, the ability to gift or resell such goods together with all of the rights with which they were first sold, and the ability to lend or perform them within a family, household or similar limited circle. To the extent required to facilitate these uses of such works, and to allow the consumer to access them at a convenient time and place, governments should allow consumers to time, space and format shift digital content products, to make temporary copies of them, and to bypass technical protection measures applied to them. Hindrance of the exercise of these rights should be prohibited by law. Where possible, consumers should have the opportunity to try a digital content product before final purchase.

71. Governments and industry should support, use and contribute to the development of open and interoperable standards for digital content products supplied to or hosted for consumers. Suppliers who provide a service to host such products online (other than a content streaming service) should also provide the means for consumers to extract them from online storage by that supplier, using open formats and protocols.

72. 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. Governments and businesses should be further guided by the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (2001).

However, our interventions on e-commerce and related areas are not restricted to the proposed new section. Member's attention is drawn also to the following:

Para 1 (new subpara (j), that promotes parity in treatment between consumers of digital and analogous products. (New para 66 is similar).

Old para 18 (new 23) regarding interoperability refers indirectly to digital products.

New para 27, on restrictions to suppliers of digital content products and services from employing technologies that have a significant effect of preventing consumers from using those products or services in ways that would otherwise be reasonable, lawful and safe. It includes network locking technologies that restrict the use of devices to particular operator networks, or the use of software restrictions.

Old para 23 (new 30), an insertion that encourage the free flow of accurate information on all aspects of consumer products, including in the case of digital content products and services, the effect of any applicable technical protection measures and information on interoperability with hardware and software.

Old para 34 (new 42), an insertion that dispute resolution mechanisms should be available also via the internet.

New para 49, to ask governments to facilitate universal access to the Internet through affordable telecommunications and Internet costs with special consideration given to the needs of public service and educational institutions, and of disadvantaged and disabled population groups.

New para 50 on the right to access neutral networks for consumers and this access to be free from discrimination according to source, destination, content and type of application.

Old para 63 (new 87 b), an insertion on the promotion of enforcement measures across borders when transactions were carried out with suppliers in other jurisdictions. Also, the establishment of dispute resolution mechanisms.

Finally, there are provisions related to loyal business practices (old para 7, new 9), unfair contract terms in contracts (old para 21, new 26), control of advertising and marketing (new para 74), that are general principles that apply to electronic commerce.

8. CI Members role

Members made a significant contribution to CI's recommendations to strengthen the UN Guidelines for Consumer Protection. This was set out in our evidence submitted to UNCTAD for the conference in Geneva in July 2013. These recommendations will remain our position and much of the rest of the work is advocacy. Members can assist in the following ways:

- Provide CI with contacts to CI for your National delegations to UNCTAD
- Lobby your national delegation to support CI's position on e-commerce.

9. Contacts at CI

- Antonino Serra Cambaceres will co-ordinate the Electronic Commerce work on the UN Guidelines for Consumer Protection, and is also managing CI's programme of work across all of the Guidelines. aserra@consumidoresint.org

10. Next Steps

CI is already lobbying the relevant chairs of the Working Groups to advance our recommendations. Where relevant, CI will contact Members from key countries in the UNGCP revision to lobby their delegations.