TACD

TRANS ATLANTIC CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE DES CONSOMMATEURS

TACD 2008 RECOMMENDATIONS REPORT

As part of its role as a consultative forum to the EU and U.S., TACD makes policy recommendations on issues of concern to its European and American members.

This report brings together TACD recommendations made in 2008 to allow the US government and the European Commission to respond formally. TACD's last recommendations report included recommendations from 2006 and 2007. This report is the fourth of an annual collection of TACD's recommendations in a year-end report to governments and the public.

TACD represents the demand side of the two biggest economic blocks in the world - the 735 million U.S. and EU consumers. Its network of EU and U.S. national consumer organisations has a direct paid-up membership of some 20 million consumers.

On both sides of the Atlantic, these groups have long track records of achievement in the consumer protection and safety fields. Many have successful publishing, research and product testing operations as well as advocacy and policy activities and are self-financed; others, according to their cultural traditions, are financed from public or foundation funds. All are independent.

More information can be found at www.tacd.org.

INDEX

The 2008 Recommendations Report covers the following:

Recommendations to the 2008 U.S.-EU Summit

June 6, 2008

TACD calls on the EU and U.S. to stop "playing chicken" with public health and work together to reduce the level of dangerous pathogens in poultry

TACD strongly opposes the current Commission proposal to open the EU market to U.S. poultry products treated with chemical washes and is pleased that following a vote in the Standing Committee on Food Chain and Animal Health on 2 June 26 EU members state experts were also opposed. Such a proposal would frustrate efforts to reduce bacterial infection rates in Europe and signal the prioritisation of trade per se over measures to ensure consumer protection.

Infection rates in chickens offered for sale are too high on both sides of the Atlantic, but are lower in the EU than in the U.S. A January 2006 report by the Consumers Union[1] found an 80% contamination rate of campylobacter in chicken purchased in supermarkets in the U.S. Rates in Europe vary between member states but are not nearly as high.

There are ongoing efforts to reduce these rates in Europe by trying to improve standards at all stages of the production chain. These efforts will be jeopardized if the current ban on American poultry is lifted. The rate of infection in Europe would be likely to go up, especially as European producers would switch to the U.S. system for economic reasons.

EU-U.S. cooperation should be about the raising not lowering of standards. TACD has called repeatedly on the US and EU to work together to improve and upgrade safety on both sides of the Atlantic and to reduce contamination rates in poultry for consumers.

TACD calls upon both governments to undertake urgent action to assess and manage the risks posed to public health and the environment by products containing manufactured nanoparticles

Manufactured nanoparticles are already present in a large number of consumer products including food, clothing and cosmetics. Tiny nanoparticles give consumer products new properties. For instance, they turn white sunscreens into clear sunscreens. It is possible that some nanoparticles could enter the bloodstream and cross the brain blood barrier, yet they are inadequately regulated and their safety has not yet been demonstrated.

The U.S. and EU governments have so far failed to respond to the research, risk assessment and regulatory gaps that some uses of nanotechnologies raise for consumers. There is currently no regulation within the EU or U.S. dealing specifically with the issues posed by nanotechnologies either in terms of an over-arching framework or within specific regulations dealing with products that are now being developed using nanotechnologies. This is particularly alarming in view of recent research published in

[1] http://www.consumerreports.org/cro/food/food-safety/chicken-safety/chicken-safety-107/overview/0107_chick_ov.htm

the journal *Nature Nanotechnology*[2] that found health risks posed by long carbon nanotubes are comparable to those posed by asbestos.

TACD urges the EU and U.S. to develop a regulatory framework that will protect consumers on both sides of the Atlantic. This should include appropriate environmental and risk assessment and pre-market safety review of all products containing manufactured free nanoparticles.

TACD calls on the EU and U.S. to eliminate their opposition to work at WIPO to provide better access to copyrighted material for the blind

TACD calls for the EU and the U.S. to engage constructively in the discussions at the World Intellectual Property Organization (WIPO) Standing Committee on Copyright and Related Rights (SCCR), on the topic of minimum copyright limitations and exceptions for the protection of consumer and public interests. TACD urges the SCCR to engage in analysis and consider norm setting in this area. In particular we stress the importance of addressing the concerns and needs of the most vulnerable or social prioritized sectors of society, and ask that the EU and U.S. take urgent action to solve the well-documented problems of the visually impaired as regards access to information and knowledge.

TACD calls on the EU and U.S. to abandon their efforts to prioritize trade impacts over consumer protection in the development of regulations

TACD sees no justification for the sweeping regulatory process changes proposed in the recent Review of the Application of EU and U.S. Regulatory Impact Assessment Guidelines on the Analysis of Impacts on International Trade and Investment, which would result in the placing of disproportionate emphasis on trade and investment at the expense of consumer protection. We are deeply troubled by the headlong rush to impose yet more burdens on the regulatory process without any prospective assessment of the very real tradeoffs involved. At stake is nothing less than the capacity of government programs to get things done to protect the public from health, safety, environmental, financial, and other harms that individuals cannot surmount on their own. "Paralysis by analysis" is not merely a rhyme: it is a real threat, which will have real consequences in the lives of real people. Instead we call for the EU and U.S. to reject trade impact statements and other devices which unnecessarily burden the regulatory process and pursue a balanced approach to regulatory impact assessment which places consumer, environmental and social needs at its heart.

Improving Toy Safety
May 2008, PSAFETY 01-08

(This is limited to the recommendations – read the full resolution).

Recommendations

To effectively remedy the imported product safety crisis, the US and the EU must:

1) Strengthen regulatory approaches.
In Europe, the toy safety legislation includes essential safety requirements which are by their nature more or less vague principles, which cannot be directly enforced. The more

[2] http://www.nature.com/nnano/journal/vaop/ncurrent/abs/nnano.2008.111.html

detailed requirements are then left to standardization bodies. This is problematic as standardization bodies are industry driven and consumer interests are rarely taken into account.

The current EU toy safety directive contains many loopholes. Many requirements related to e.g. physical or chemical properties do not adequately address the risks posed by toys. In our view, we need stricter regulatory requirements for the safety of toys i.e. more detailed specifications/limits are needed in the legislation. The establishment of noise limits was a good example where standardization processes were not suitable to quickly address newly identified risks.[3]

Similarly in the US, the industry's voluntary toy safety standards should be made mandatory – and therefore would ensure that all toys are tested to comprehensive criteria, including requiring that strong magnets do not fall out of toys. The Senate version of the CPSC reform legislation includes a provision giving the CPSC authority over, and requiring third party testing of, toys now covered by the voluntary ASTM F-963 toy standard. This standard, and all industry standards, should be reviewed and updated in an appropriate regulatory fashion before being made mandatory.

2) Expand and develop programs for mandatory 3rd party testing of toys and durable children's products such as cribs by independent laboratories. Pre-market testing of key children's products is critical to identifying dangers before they harm children.

In the EU, toys must bear the CE marking to be placed on the market. The CE Marking is a self-declaration by manufacturers that their products comply with EU legislation. However, it is wrongly interpreted by most consumers to mean that a product has been tested or approved by a third party, perhaps even by an official body, and/or that that the product was made in Europe. Consumer organisations have long been calling for the CE marking not to appear on or with consumer products any more – although the underlying requirements regarding liability and technical documentation should remain.

The EU has currently 3rd party testing of toys only on a limited number of toys if there are no harmonized standards available. As the current EU system of CE marking (displayed by producers without any third party controls) on toys is not a guarantee of safety, the system of third party testing should be reviewed and expanded to certain categories of toys and children's products that have been identified as problems.[4]

[3] Within the EU standardization body CEN, it was not possible to establish a safe limit for impulsive noise emitted by toy cap pistols after years of debate involving an enormous amount of resources. Even after Germany and Austria had triggered the safeguard clause, CEN's Toys Committee refused to establish safe limits. Such limits were finally established after strong political pressure from the Commission. The lesson to be drawn is therefore that the regulators should be responsible for defining the necessary level of detail, where needed, by establishing specifications (e.g. ban or limit values for dangerous chemicals). A specific procedure (so-called 'comitology' in the EU) should be foreseen in order to allow for a quick adaptation of these specifications to e.g. emerging risks without having to transfer the tasks to the standards bodies.
Of course, some of these tasks (e.g. development of test methods) may be allocated to the Standards Bodies. But it should be based on a case by case basis, decision and efficient measures to take corrective action must be available.

[4] In the EU, the following types of toys (and children's products) should undergo a mandatory EC-type examination:
- toys intended for children under three years (e.g. rattles);
- toys which, for functional reasons, cannot be designed to eliminate all risks (e.g. toys with high accessible surface temperature, magnetic toys);

The House and the Senate version of CPSC reform legislation expected to pass into law this year includes such 3rd party testing program for toys and durable children's products. The provisions in both bills which allow in-house proprietary labs to be certified should be removed.

3) Establish meaningful civil penalties that will deter wrongdoing. The fines that can be applied to toy companies that manufacture or import dangerous toys should be increased to act as an effective deterrent. In the US, Congress has proposed increasing civil penalties from a maximum $1.8 million to $10 million, with the Senate allowing $20 million in some circumstances. U.S. TACD members had recommended even stronger penalties, or at least $100 million as a compromise, which would take into account the number of violations and force companies to treat penalty threats seriously, not as a mere cost of business.

In Europe, penalties imposed by member states should be reviewed and revised upward. It is crucial that penalties act as a meaningful deterrent in all member states. Penalties should increase according to the number of infringements committed by the economic operator.

4) Review and expedite systems to stop unsafe imports from getting to children. In the US, in many instances the CPSC cannot issue a recall or stop unsafe imports at the border without having a formal hearing first. The CPSC needs authority similar to that of the FDA to stop unsafe imports at the border immediately and issue an Import Alert to all ports and U.S. inspection personnel.

In the EU, we consider it crucial to develop harmonised control standards amongst Member States. This only will ensure that products, which have been refused in one EU country, cannot get access to the EU market by approaching another country.

The Commission can issue a RAPEX alert, but it is up to member states to act upon the alert to intercept unsafe products at the border and issue recalls. We need to require Member States to monitor and follow up notifications. Moreover Member States should monitor and verify that economic operators fulfill their legal obligations arising from product recalls.

For both, the EU and the US the overall number of controls has to be increased and provisions as to how controls should be performed must be developed. In particular, dangerous chemicals contained in toys should be detected through comprehensive laboratory checks, before the products can be placed on the market. As these analyses are time consuming and rather expensive, market surveillance authorities need better equipment as well as human, technical and financial resources in order to carry out their tasks.

5) Ensure rapid transatlantic communication about dangerous products. Unlike other U.S. agencies such as the FDA which have negotiated Memoranda of Understanding with their European counterparts to allow for the rapid exchange of information regarding

- toys which, in case of a failure, can lead to severe health impacts of a child (e.g. toy containing a laser);
- toys which have caused severe accidents in the past (cf Rapex notifications);
- toys which have raised considerable concern in enforcement activities

dangerous products, the CPSC has failed to do so. In many cases, the agency delayed nearly seven months after learning of dangerous, defective products before telling the public and European regulators. This problem must be solved so that both transatlantic regulators and consumers on both sides of the Atlantic have quick access to information regarding dangerous products and products under investigation. Both the U.S. House and Senate versions of the CSPC reform legislation should remove any remaining barriers to CPSC sharing information promptly with their European counterparts. Upon passage, CPSC and the EU should take immediate action to set up effective and timely information sharing systems.

6) Alter various provisions of trade agreements, whose rules limit product safety standards and border inspection. For instance, the WTO's Technical Barrier to Trade Agreement (TBT), with very limited exceptions, discourages countries from taking a leadership role in safety regulation by stating that standards shall be based on existing international standards. The TBT agreement's "national treatment" rule requires that member nations treat foreign produced goods the same as domestically produced goods, thus imported goods may not be inspected at a greater rate than similar domestic goods or a trade challenge could be brought. Also needed is a long term strategy to improve production and processing methods (PPMs). Dangerous products and unacceptable environmental and societal production methods often go hand in hand. In the long term, we need to develop strategies to address the issue of production methods of goods in the countries of origin. This is a complex problem that will require a range of strategies, including a review of relevant international trading rules that may impede the appropriate application of PPMs.

7) Establish public databases of consumer complaints about products so that consumers can learn if others have had a problem with a product they are using. Legislation put forward by the U.S. Senate establishes a new public right to know database of injury reports and consumer complaints reported to the CPSC based upon a longstanding database at the National Highway Traffic Safety Administration (NHTSA). This mechanism will be most useful if dissatisfied consumers are able to post a complaint to the data base and all the information regarding that complaint is immediately available to the public, without screening or delays. Such data bases could lead to the more immediate identification of global problems and quicker action on the part of government officials.

8) Review and ban unsafe ingredients in toys that can be put into children's mouths.

- The US should examine the work of the EU and the state of California to ban phthalates in children's toys. The Senate proposal incorporates an improved version of California's ban on toxic phthalates. The EU should strengthen it guidance document to ensure that all toys that can be put in children's mouths or chewed upon are covered by the 2005 directive on phthalates.

- The use of chemicals in toys should be more strictly regulated, including a ban on allergenic fragrances and carcinogenic, mutagenic and toxic for reproduction (CMR) substances. CMRs 1, 2 and 3, should be banned in all toys in the EU. The U.S. should study and emulate this action.

Both governments should introduce a complete zero tolerance ban on all lead in toys and children's products.

Country of Origin Labelling
March 2008, FOOD 29-08
(This is limited to the recommendations – read the full resolution).

Recommendations

Mandatory Program
TACD supports a mandatory country of origin labeling program to assure that consumers are provided necessary information about the origin of the food they purchase and consume. Voluntary labeling programs do not offer the same benefit as a mandatory labeling program since, by definition, voluntary programs do not require all foods in a particular category to be labeled.

Proper Labeling
TACD supports mandatory country of origin labeling notification for commodities including, but not limited to, meat (including beef, lamb, pork, and goat), poultry, farm-raised and wild fish and seafood, fruits, vegetables, dairy products and nuts. All food products in these categories should be identified through the use of a label, stamp, mark, or sign that is on or near the food product. If the food product is prepackaged, the country of origin should be identified on the label. This should include information about the origin of the main ingredients as well as information about where the food was processed. Labeling should include all variations of the food product, whether it is fresh, frozen, canned or otherwise minimally processed.

Multi-ingredient products
TACD supports mandatory country of origin labeling of the main ingredients in a multi-ingredient food product. The product should be labeled with the country of origin of the main ingredients as well as the place of processing. TACD encourages manufacturers and retailers to label additional ingredients where possible. Identification of country of origin should be listed prominently on the food label.

The U.S. government should implement the country of origin labeling law as outlined in the 2002 Farm Bill and further clarified in the House and Senate versions of the 2007 Farm Bill. The U.S. Department of Agriculture should promulgate regulations in this regard so that mandatory COOL is implemented in the U.S. by September 30, 2008. Existing exemptions for butcher shops, fish markets and uncovered processed foods should be eliminated. The USDA should conduct periodic surveillance of the consumer marketplace to assure that COOL is being implemented properly and consumers are afforded this information. Repeated and willful violations of the law should be assessed penalties.

With its draft regulation on the provision of food information to consumers, the E.U. commission has gone a step forward in improved country of origin labeling, as it has clarified that there is a difference between the place of processing and the origin of a food product. We welcome this proposed clarification in language as it will provide consumers with appropriate information about the true origin of the main ingredients of a multi-ingredient food and not just where that food product was processed. The E.U. proposal, however, is a voluntary one. The E.U. commission should, instead of leaving

mandatory COOL to the member states, introduce mandatory country of origin labeling on the E.U. level. Leaving COOL to the member states will lead to different rules and schemes in different member states which may cause confusion among consumers. A mandatory European country of origin labeling regulation should then provide consumers across the E.U. with information on the origin of the main ingredients of food products as well as the place of processing. Furthermore, TACD does not support a "made in the E.U." label as it is too broad for consumers who want to know the particular country in which a food product has been produced.

Nutrition disclosure for restaurant foods
May 2008, FOOD 30-08
(This is limited to the recommendations – read the full resolution).

Recommendations

The Transatlantic Consumer Dialogue calls upon the governments of the United States and the European Union to require fast-food and other chain restaurants with 10 or more establishments to provide information about nutritional quality on menu boards or menus for standardized menu items.

Requirements for nutrition disclosures may vary from nation to nation, due to nutritional health priorities, cultural traditions, results of consumer research studies, and consumer expectations. In general, such requirements should be based on the following principles:

- Nutrition disclosures requirements for chain restaurants with 10 or more outlets should be mandatory for each standardized menu item.
- Nutrition disclosures should be made at the point of purchase, in a uniform location on menu boards or menus next to the name and price of each standard menu option, and should be easy to comprehend by consumers, including children.
- Current practices by some companies of disclosing nutrient levels and GDA's for particular items on the Internet, in brochures, and/or on posters, or trayliners are difficult to comprehend, confusing, and do not sufficiently inform consumers at the point of sale.
- National authorities should determine the most useful form of nutrition disclosure. This may include use of universal symbols indicating calorie content and/or saturated fat, sodium and sugar levels. Simple signposting should clearly indicate healthier and less healthy options consistent with national dietary guidelines based on public heath priorities.

Food products from cloned animals
November 2008, FOOD 31-08
(This is limited to the recommendations – read the full resolution).

With regard to the use of animal clones and their progeny in the food supply, the TACD makes the following recommendations to the EU and US Governments:

1. We consider it is premature to permit the use of cloning and the offspring of clones for food production while there are unresolved issues around food safety, animal health and how an effective consumer choice could be maintained.

2. Prior to any cloning for commercial purposes, TACD calls for the EU and US governments to sponsor an open and transparent public discourse on the economic, ethical and social impacts and issues associated with the use of such technologies. Such discourse should fully analyze the risks and any purported benefits of animal cloning, should inform the governments and the public about whether and why cloning should be allowed and, if so, how it should be used.

3. TACD calls for the EU and US governments to reassess the safety of all foods produced or derived from cloned animals and/or their offspring, and to insist on studies designed specifically to assess safety of clones that look at animals over their entire lifetime and include sufficiently large study populations to draw valid conclusions. Such a pre-market assessment process should be transparent and allow for public input before any safety determination is made. Until a particular species of cloned animal and its progeny has been evaluated under such a regulatory process, products from those cloned animals and their progeny should not be allowed into the food supply. As well as a safety assessment, the approval process should utilize the precautionary principle and include an analysis of other legitimate factors, such as social and ethical considerations (see TACD resolution Food-16-00) TACD reiterates that the precautionary principle applies in cases where the scientific evidence is not conclusive to determine the level of protection but there is a necessity to take measures for the purposes of protecting public health, safety, or the environment. (See TACD position paper Food 9PP-99).

4. TACD currently believes that there is a paucity of publicly available scientific evidence concerning the safety of cloning on the welfare of animals, food products derived from those animals and their progeny, and the impact on agricultural management practices. Furthermore, appropriate regulatory agencies should conduct a thorough assessment, including a cost/benefit assessment as well as an assessment concerning the impact on sustainable agriculture. It must be guaranteed that this assessment be conducted in a transparent and participatory manner, and publicly available information must be used.

5. Consistent with existing principles, regulations and practices, the governments of the EU and US should maintain prohibitions on the use of cloned animals and their progeny in organic production.

6. If cloned animals or their offspring are used for food production, TACD calls upon the EU and US governments to establish mandatory labelling and traceability of such products. Such information should allow consumers to exercise their choice to eat or not eat food made from this technology.

Net Neutrality

March 2008, INFOSOC 36-08

(This is limited to the recommendations – read the full resolution).

Recommendations

1. TACD calls upon the US and EU governments to recognize, promote, and encourage the above-defined principles of net neutrality.

2. TACD calls upon regulators to assess the level of competition in broadband Internet access, and take steps to ensure that consumers have continued access to a neutral network.

3. TACD urges regulators to prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications, or devices.

4. TACD calls upon telecommunications and competition regulators in the US and EU to require that ISPs provide fair and accurate information regarding Internet service plans, including average estimated speeds and any existing caps on bandwidth. ISPs and network providers should also detail their compliance with net neutrality principles and regulations; where any content, services, applications, or devices have been blocked or degraded on their networks, ISPs and network providers must be able to justify to the regulators how these actions fall within the scope of legitimate network management.

5. TACD urges ISPs to provide consumers with more 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, services, applications, or devices. Such management should be limited to legitimate purposes.

6. TACD calls upon regulators and lawmakers to ensure that consumers have recourse to an effective complaint and enforcement mechanism if providers fail to provide service plan information or discriminate unfairly against content, services, applications, or devices.

7. TACD calls upon regulators to periodically assess the extent to which ISPs and network providers discriminate against content, services, applications, or devices on their network; whether such discrimination falls outside the scope of legitimate network management; and take action against unfair discrimination.

Consumer Rights in the Digital World
March 2008, INFOSOC 37-08

(This is limited to the recommendations – read the full resolution).

Recommendations

1. **Right to access neutral networks**[5]

The TACD 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

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

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 devise. Such management should fall within the scope of legitimate network management.

2. Right to access digital media and information [6]

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 services[7]

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

[6] See also: Resolution and Background Paper on Digital Rights Management, The Sequel (IP-03-07): and Resolution on Digital Rights Management (IP-01.05):

[7] See also: Resolution on Internet Security (Infosoc-34-07): and Resolution on Identity Theft, Phishing and Consumer Confidence (Infosoc-33-07):

- 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

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 interoperability[8]

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.

[8] See also: Resolution on Software Interoperability and Open Standards (Infosoc- IP-35-08)

- 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

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

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.

Software Interoperability and Open Standards

July 2008, IP 04-08

(This is limited to the recommendations – read the full resolution).

Recommendations

TACD resolves that EU and US governments should:

1. Analyse with a clearly defined consumer welfare perspective the efficiency, cost, and flexibility of all tools available to achieve interoperability.

2. Promote the creation and adoption of nonproprietary hardware and software interfaces through a combination of policy, legislation, regulation and procurement policies in addition to voluntary standards development activities.

3. Adopt concrete definitions of interoperability and open standards in different areas that take into account the context of the problem being addressed, and which promote economic and social development goals. These should clearly have the consumer and enduser interest as their focus. When possible and appropriate, such definitions should be explicit in addressing policy objectives of competition and functionality on different technology platforms, including those involving free software.

4. Adopt and make use of traditional exante regulatory approaches. Apply effectively, enforce vigorously and adapt where necessary traditional consumer protection laws to the digital environment; for example, by requiring clear and trustworthy warning 5 labels on products to signal lack of interoperability, adapting unfair commercial practices laws, and prohibiting unfair contract terms and sales.

5. Promote open standards through procurement and ensure the use of software and services based on open standards in public procurement policies through for example legal mechanisms such as mandatory eGovernment Interoperability Frameworks. Ensure that public services and information/data are based on open standards.

6. Government procurement of software should include requirements that word processing and presentation graphics programs can read and write to open standards compliant document formats that are not effectively controlled by one company, and which realistically facilitate competition in the market for such programs, and which can be implemented effectively on at least the three leading operating system platforms. Government procurement of computer printers should include requirements that manufactures provide the drivers and interface information necessary to make such printers work with at least the three leading operating system platforms. By 2010, the US and the EU should make efforts to ensure government procurement of audiovisual software and services that use open standards compliant formats that work on at least the three leading operating system platforms. Government procurement of software should include requirements that saving data into an Open Standard should be the default setting of the program. Every two years, the US and EC should solicit public comment on additional areas where government procurement policy can be used to promote interoperability and open standards.

7. Where appropriate, mandate open standards for file formats, open intercommunication protocols, and interoperability for consumer software and services

8. Ensure disclosure of interoperability information that is essential to create interoperable applications and services.

9. Require data portability between systems and applications, as well as longterm access to personal and public electronic records

10. Vigorously apply antitrust legislation and investigate and expeditiously pursue anticompetitive practices that affect interoperability.

11. Proactively investigate and pursue any infringements of data protection and privacy regulations resulting from the development of new interoperability based systems and services.

12. Establish a level playing field upon which Open Source or proprietary software can compete with each other fairly. This should be based on both the technical merits of the software and the merits of non-software features: for example the potential for software to be redistributed or modified because of permissible copyright licensing, the availability of multiple service vendors, and the viability of the development community or company producing the software.

13. Ensure consumer organisations participation in standards, which is crucial to ensure best protection for consumers, and better acceptance of products and services in the market place. This will require increased public resources and greater openness in the standardisation system.

The role of Internet Service Providers in Mediating Online Content and Communications

July 2008, IP 06-08

(This is limited to the recommendations – read the full resolution).

Recommendations

TACD resolves that EU and US governments should:

1. Require a thorough and critical review of the risks to consumers and an assessment of the unintended consequences of any proposals regarding the monitoring of consumers' communications and use of online content.

2. Consider whether such proposals would erode consumer and civil rights, such as the rights of privacy, due process, defense and access to information and knowledge. A full range of consumer protection safeguards should be provided for these rights.

3. Ensure that any monitoring of the Internet and use of collected electronic data is done under judicial control and in compliance with all laws on the protection of personal data, and with the understanding that an IP address is personally identifiable information subject to legal protection

4. Ensure that any monitoring of consumer activity is undertaken in accordance with the principle of proportionality.

5. For any online enforcement efforts, assess the sanction and the crime targeted pursuant to the principles of effectiveness and of dissuasiveness. Under these principles, the termination of Internet access is an extreme solution, legally and economically disproportionate as a response to alleged infringement.

6. Ensure that any proposals to monitor online content are accompanied by a review of alternative solutions that focus on systems of remuneration for creative communities, thus fostering the development of innovative business models and, more broadly, the development of the digital economy.

7. Analyze all the legal consequences of any monitoring or ISP liability approach in order to avoid conflicts with existing laws as well as potential conflicts of norms or other legal uncertainties that could be caused by the proposed system.

WIPO Negotiations on Copyright Limitations and Exceptions, with Special Reference to the Needs of Visually Impaired Persons and Access to Orphan Works

July 2008, IP 05-08

(This is limited to the recommendations – read the full resolution).

Recommendations

1.The EC and the US should eliminate their opposition to the elements of the proposed WIPO SCCR L&E work program that relate to analysis and norm setting.

2.The EC and US are requested to meet with representative of TACD and World Blind Union to discuss a treaty for *minimum* L&E for the visually impaired.

3.The EC and US should submit to the WIPO General Assembly in September 2008, a concrete proposal for or addressing norm setting for the minimum L&E needed to expand investments in publishing and services for visually impaired persons.

4.The EC and the US should propose a draft treaty on minimum L&E for the visually impaired at the November 2008 WIPO SCCR meeting,

5.The EC and the US should ask WIPO to prepare an experts report on the areas where flexibilities in the enforcement sections of the TRIPS can be used to address the orphan works problem, including in particular, the flexibilities in Article 44.2 of the TRIPS.

6.The EC and the US should not extend the term of copyright or related rights beyond that required by Berne, Rome or WCT treaties or the TRIPS agreement. In cases where such term extensions are used, the extended term should only be given in those cases where the owners of the rights register the works, and pay at least nominal fees, in order to ensure that the works for which right owners are not actively exploiting commercially enter the public domain, and become freely available, without a requirement to obtain a license or pay royalties.