Latest developments in CI's campaign to update the UN Guidelines for the digital age

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Outline

1. The change from A2K to e-commerce
2. New provisions
3. Changed provisions
4. Removed provisions
5. Other areas we could add
6. Conclusions
Why e-commerce now rather than A2K?

• A2K issues for consumers can be thought of as a subset of e-commerce issues

• We have information that one particular government will fight against A2K

• Our A2K section alone was disproportionately long compared to others

• Some of the provisions on promoting A2K were more of a stretch from traditional consumer policy
New provisions – privacy, digital parity

• Privacy now included as an overall objective, not just under “e-commerce”:

  1(i) To safeguard consumers against the collection, use, disclosure or loss of their personal information without their consent

• In “economic interests” section:

  27A The above protections should be applied equally to products and services obtained through electronic modes, as well as traditional retail transactions.
New provisions – online parity

55A. 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.

55B. Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.
New provisions – e-commerce information

55C. Businesses engaged in electronic commerce with consumers should provide:

(a) accurate, clear and easily accessible information about themselves …

(b) accurate and easily accessible information describing the goods or services offered; … and

(c) sufficient information about the terms, conditions and costs associated with a transaction …
New provisions – e-commerce contracts, security, ADR

55D. 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 he or she wishes to purchase; 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.

55E. Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

55F. Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.
New provisions – e-commerce education

55M. 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).
Changed provisions – objectives

• To promote and enhance access to knowledge for consumers; that is, more equitable public access to the products and tools of human culture and learning.

• To promote parity in the treatment of consumers of online or digital products or services, and similar products and services provided in offline or analogue form.
Changed provisions – enforcement

55I. Acts of copyright infringement committed by consumers for non-commercial purposes, or possession of copyright-infringing goods in non-commercial quantities, should not be punishable by criminal sanctions, nor by the suspension or termination of the consumer's access to essential communication networks such as the Internet.

5A. Policies for the enforcement of rights over digital content products should seek to strike a fair balance between the object of rewarding creativity and investment in the provision of those products, with the cultural, civic and educational rights of consumers and their needs for economic and social development.
55H. To the extent necessary to enable a consumer to exercise the rights over a work described in paragraphs 55E or 55F above, the consumer must be afforded the right to circumvent technological protection measures applied to that work. … Governments should apply similar penalties against those who hinder or prevent consumers from exercising the rights described in paragraphs 55F or 55G above as are applied to the infringement of copyright in the work.
Governments must protect the rights of consumers of knowledge goods over the underlying copyright works in those goods. The rights that should be recognised by law and protected from derogation by contract include:

...  

(h) To resell knowledge goods together with all of the rights with which they were first sold, provided that they destroy any personal copies they may have made.
(d) To time, space and format shift the works so that they can be accessed at a convenient time and place;

(e) To use works in digital form, or works that the consumer has shifted into digital form, on any compatible device, and to make any temporary copies that may be required to enjoy such use;

(f) To copy, lend or perform the works for personal use, family use or similar uses within a limited circle;
55G. 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.
21B. Provisions in standard form non-negotiated licenses for products do not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws.
Removed provisions – promotion of A2K

Access to knowledge for consumers should be promoted and protected by governments as part of their duty to uphold their citizens' rights to seek, receive and impart information and ideas through any media and regardless of frontiers; to receive an education directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; and freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
Governments should work to actively maintain a rich and accessible public domain. No expansion of the scope or extension of the duration of copyright protection should be made without wide public consultation and a comprehensive, objective and transparent assessment of public benefits and detriments. Rights holders should be permitted to voluntarily relinquish copyright in their own works. It should not be possible to re-appropriate exclusive rights over public domain works by technological, contractual or other legal means, or by making technical reproductions of such works.
Removed provisions – government works

Governments should limit or exclude copyright protection for works that they have produced or funded, should endeavour to provide universal online access to such works including all official public documents, and should support the preservation, digitisation and online dissemination of other public domain works. Governments should be further guided by the UNESCO Charter on the Preservation of Digital Heritage of 15 October 2003, and the UNESCO Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace of 21 November 2003.
Removed provisions – libraries

Governments have a responsibility to fund public libraries and archives, and to facilitate their operation through appropriate limitations in copyright law to allow archival and preservation, lending, and copying for education and research. Libraries should be permitted to circumvent technological protection mechanisms on digital works for the above purposes.
Governments, in partnership with the private sector and other relevant organisations, should encourage the development and use of more inclusive models for the production and distribution of knowledge and culture, including the use of free and open licenses that allow works to be freely studied, applied, copied and/or modified, by anyone, for any purpose. Open collaborative projects that utilise such licenses should be supported as incubators of creativity and innovation.
Removed provisions – flexibilities

[Governments must protect consumers' rights...]

(a) To make use of such works for private research and study purposes, including distance education;

(b) To make use of such works in criticism, commentary or parody;

(c) To make copies for backup purposes;

(g) To adapt works, or to make use of adaptations made non-commercially by others, to overcome a disability suffered by the consumer or by a member of the consumer's family or household that would otherwise interfere with their enjoyment of the works;
Removed provisions – circumvention

[55H. To the extent necessary to enable a consumer to exercise the rights over a work described in paragraphs 55E or 55F above, the consumer must be afforded the right to] modify a device to enable it to be used for accessing the work, provided in the latter case that the consumer owns that device or has permission from its owner to do so.

(But see para 21A which covers this anyway.)
55G. Recognising that much creative expression in the digital age is produced by consumers drawing on elements from their surrounding culture, governments should recognise consumers' right to quote or otherwise make reasonable use of a copyright work in the creation of a new work, and to distribute that new work non-commercially, provided that:

(a) The source is not an obviously infringing copy;

(b) The use does not conflict with the normal exploitation of the existing work and does not unreasonably prejudice the legitimate interests of the author; and

(c) The source is acknowledged where it is reasonable in the circumstances to do so.
65A. Governments should work to eliminate unnecessary barriers to the export of legally produced knowledge goods, including those that have been adapted for the use of consumers who are blind, visually impaired or reading disabled.

(This was intended to help the effort for a WIPO Treaty for the Blind and Visually Impaired, but is no longer needed for that.)
Other areas we could add (but haven't)

- ARICEA consumer protection guidelines
- Access to data (e.g. M-Lab broadband data, Midata, User Data Manifesto)
- Reasonable accommodation of the needs of persons with disabilities
- Information related to critical aspects of life provided in national and local languages
- Enhance the competences of consumers on information, digital and media literacy
Conclusions

- Strategic reasons to rename our “A2K” amendments to “e-commerce”
- Removal of provisions that are less directly related to consumption
- Streamlining of other provisions to reduce overall length
- Addition of provisions on e-commerce based on OECD text
- Your feedback is needed during this week!