Proposed A2K amendments to the United Nations Guidelines on Consumer Protection

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Objectives

Added the bold text to the preamble:

Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, the rights to participate in cultural, civic and educational affairs, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection.
Objectives (continued)

Added a new objective (i):

(g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;

(h) To promote sustainable consumption; and

(i) To promote and enhance access to knowledge for consumers.
General principles

Similarly, added a new consumer need:

3. The legitimate needs which the guidelines are intended to meet are the following: …

(g) The promotion of sustainable consumption patterns; and

(h) Access to knowledge, as a precondition of consumers' full participation in cultural, civic and educational affairs.
General principles (continued)

And a general principle for A2K policies:

5A. Policies for promoting access to knowledge should seek to strike a fair balance between the desire to reward creativity and investment in the provision of knowledge resources, with the cultural, civic and educational rights of consumers and their needs for economic and social development.
Guidelines

Added the bold text to the general notes:

10. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations, as well with international principles that protect human rights and social, cultural and economic rights of all people.
Promotion and protection of consumers' economic interests

Three related amendments in overview:

1. No amendments to the terms of use of a product if the consumer hasn't agreed.

2. Regulation of digital locks that prevent reasonable, safe and lawful uses.

3. No updating consumer electronic devices without the consumer's agreement.
Promotion and protection of consumers' economic interests (continued)

The “no amendments” amendment:

21. Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, variations or additions to the terms of use of a product or service to which the consumer does not freely agree, and unconscionable conditions of credit by sellers.
Promotion and protection of consumers' economic interests (continued)

The “digital locks” amendment:

21A. Governments should restrict suppliers of digital products and services from employing technologies that have a significant effect of preventing consumers from using those products or services in ways or for purposes that would otherwise be reasonable, lawful and safe.
The “updating devices” amendment:

23A. Suppliers of consumer electronic devices, or of proprietary software for such devices, may not issue a software or firmware update that would disable the consumers access to functionality that the device or software possessed at the time of purchase, unless:

a) the update is essential to protect the safety of the consumer or the consumers data;

b) the consumer is fully and clearly informed of the effects of the update; and
Promotion and protection of consumers' economic interests (continued)

The “updating devices” amendment (continued):

c) the consumer is given the opportunity to accept or reject the update, unconditionally upon the acceptance of any other update that improves or corrects functionality of the device or software.
Education and information programmes

Added a paragraph on Internet access:

40A. Bearing in mind the value of the Internet as a channel for consumer education, including long distance learning and knowledge sharing between consumers, governments should 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.
Access to knowledge

Thirteen new paragraphs, in overview:

1. Preamble
2. The public domain
3. Government works and preservation
4. Free and open source licences
5. Copyright exceptions
6. Non-commercial works by consumers
Access to knowledge (continued)

7. Circumvention of digital locks

8. No criminal or three-strikes penalties for non-commercial infringement or possession

9. Open standards and cloud computing

10. Cultural diversity

11. Network neutrality

12. Privacy (collection)

13. Privacy (protection)
Access to knowledge (continued)

1. Preamble

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.
2. The public domain

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.
Access to knowledge (continued)

3. Government works and preservation

Governments should where appropriate 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 also have a responsibility to fund public libraries. Governments should be further guided by the UNESCO Charter on the Preservation of Digital Heritage, and the UNESCO Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace.
Access to knowledge (continued)

4. Free and open source licences

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.
Access to knowledge (continued)

5. Copyright exceptions

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:

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;
5. Copyright exceptions (continued)

c) To make copies for backup purposes;

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 other similar uses within a limited circle;
Access to knowledge (continued)

5. Copyright exceptions (continued)

  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; and;

  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.
Access to knowledge (continued)

6. Non-commercial works by consumers

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;
Access to knowledge (continued)

6. Non-commercial works by consumers (continued)

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.
Access to knowledge (continued)

7. Circumvention of digital locks

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, or 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. Governments should apply similar penalties against those who hinder or prevent consumers from exercising the rights described in paragraphs 55E or 55F above as it applies to the infringement of copyright in the work.
Access to knowledge (continued)

8. Limiting criminal or three strikes penalties

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 consumers access to essential communication networks such as the Internet.
9. Open standards and cloud computing

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

10. Cultural diversity

Government policy should promote the creation, dissemination and preservation of content in diverse languages and formats, including local content suited to domestic or regional needs. Governments should be further guided by the UNESCO Universal Declaration on Cultural Diversity of 2 November 2001, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005, and the UNESCO Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace of 21 November 2003.
Access to knowledge (continued)

11. Network neutrality

The Internet has become a basic means of communication for individuals and their most important means of access to knowledge and general information, as well as a platform for consumers access to participate in public, democratic debate. Considering this, governments and business should afford consumers 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.
Access to knowledge (continued)

12. Privacy (collection)

Consumers who access information and knowledge in digital form should not thereby sacrifice their personal privacy. Governments and businesses should ensure effective consumer control of personal data, through collection of personal data (including internet usage information and IP addresses) only when strictly necessary and in an open and transparent way, and wherever practicable and lawful, through free, informed and positive consent (opt-in).
Access to knowledge (continued)

13. Privacy (protection)

Business and governments should apply data minimisation practices and use effective and updated technology to protect confidential personal data against unauthorized use. Those affected by any personal data breach must be promptly notified of the details of the breach and of the available means of redress. The content of consumers communications online must not be intercepted by governments or third parties without a valid court order.
Measures relating to specific areas

Added to the paragraph on pharmaceuticals:

61. Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems … Governments should also provide an enabling environment for generic competition in the market for pharmaceutical products, in order to improve consumers' access to affordable healthcare.
International cooperation

Added a paragraph on interoperability of national copyright exceptions:

65A. Governments should work to eliminate unnecessary barriers to the export of works produced pursuant to national copyright exceptions, including works that have been adapted for the use of consumers who are blind, visually impaired or reading disabled.
Questions for our table groups today

1. Does the proposed amendment promote A2K for consumers?
2. Does it fit in the UN Guidelines?
3. Could it be better expressed (why)?
4. How easily can we advocate for it?
5. Would it or any part of it be better moved into a separate commentary?
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