

Consumer Law

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Denmark Finland Norway Sweden

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Position statement of the Nordic Consumer Ombudsmen on e-commerce and marketing on the Internet

Introduction ➔

The Nordic Consumer Ombudsmen have agreed on a Position Statement for e-commerce and marketing on the Internet. This Position Statement should also be applied, in relevant respects, for corresponding communications systems such as mobile communication.

In this Position Statement, the Consumer Ombudsmen have summarised some important rules with which businesses should comply in transactions with consumers in order to satisfy the common demand for good marketing practices. The Position Statement reflects the specific legislation and legal practice that has been developed for e-commerce and also provides in some areas an indication of what should apply as good marketing practice. The use of "should" and "shall" alternates in the Position Statement. "Shall" is used if the matter is prescribed by law in all of the Nordic countries and "should" when it expresses the opinion of the Ombudsmen.

The Position Statement is not exhaustive as regards what rules apply for e-commerce and corresponding communications systems. There are specific requirements relating to information in the national legislation, for example in the Distance Contracts Act and the Electronic Commerce Act. There are also general rules for marketing and unfair contract terms. In order to obtain the most complete picture of the rules in the field, refer to national legislation. See also the appendix to this Position Statement with links to the Nordic Consumer Ombudsmen's websites with information on national laws and guidelines. In the case of marketing conducted across borders, the rules in the receiving country must be taken into account.

There are also international guidelines for good business practice on the Internet. In particular, it is especially appropriate to mention the OECD's Guidelines for Consumer Protection in the Context of Electronic Commerce www.oecd.org and the ICC's Guidelines on Advertising and Marketing on the Internet www.iccwbo.org. There are a number of EU directives governing the fields covered by this Position Statement. The majority of directives have been adopted as national legislation in accordance with the above. Information Technology is a very dynamic field and new legislation and practice is developing continuously. It may therefore be necessary to supplement this Position Statement.

This document replaces the Common Position on E-commerce and Marketing on the Internet that was adopted in December 1998.

The Nordic Consumer Ombudsmen

October 2002

1. General ➔

The Position Statement covers e-commerce and marketing in the Nordic market via the Internet and corresponding communications systems in relevant respects.

Consumer protection for electronic commerce may not be at a lower level than the protection within other forms of commerce. Marketing and contract terms shall be formulated in an effective and comprehensible way and the capacity of the media shall be used to their fullest extent to facilitate the reception by the consumer of important information.

The consumer protection rules that apply generally, such as legislation on contract terms, sales, services, marketing, price information, distance contracts, personal data, etc. also cover e-commerce and marketing on the Internet. The consumer should be entitled to protection that is equally good in connection with cross-border sales within the EU as in relation to national transactions.

A business that markets products across borders within the EEA is, in the first instance, liable to comply with the legislation in the country of establishment in accordance with the Directive (2000/31/EC) on Electronic Commerce. The Nordic Consumer Ombudsmen can intervene against marketing on the Internet from other countries within the EEA if it is necessary to protect consumers whose interests are otherwise at jeopardy of being seriously harmed and the measure is reasonably proportionate to the interest of protecting the consumer. Intervention against marketing emanating from countries outside the EEA can always take place if the marketing is directed at consumers in one or more Nordic countries.

The national legislation of the Nordic countries is applicable – with the exceptions referred to above – if the marketing may be deemed to be directed at that market. In order to determine whether marketing is directed at a particular market, an overall assessment is conducted, including the following factors in particular.

Which languages, currencies and other national characteristics are used.

The extent to which the operation or the service in question is otherwise marketed in the market in question.

The extent to which there is a connection between the marketing on the Internet and other marketing activities in the market in question.

The extent to which the business accepts the conclusion of contracts with consumers belonging to the Nordic country in question.

The Nordic Consumer Ombudsmen have concluded a cooperation contract, whereby they collaborate and provide support to each other to stop violations of market law in the country where the business is established if the marketing has an impact in another Nordic country. This cooperation takes place within the framework of the EC Directive (98/27/EC) on injunctions for the protection of consumers' interests. The Nordic Consumer Ombudsmen are the qualified entity to bring actions in accordance with the Directive in another EEA country. The Consumer Ombudsmen intervene against violations of good marketing practice with, among other things, prohibitions subject to default fines.

2. Forms and methods of marketing →

Advertising identification

All marketing shall be designed and presented in such a way that it is clearly indicated that it constitutes marketing.

Further details of this under section 8, Marketing directed at children and young people.

This section may be extended to cover the integration of marketing into standard software or marketing designed in such a way that it appears to be part of standard software. Examples of this are the use of dialogue boxes in marketing (for example, windows that indicate e-mail received), or to use sound signals that warn of incoming e-mail, but which are only intended to attract attention to marketing.

Design and placement of advertising

Advertising shall not be of such a kind that it involves, to a substantial extent, a limitation of the use of the Internet for a not insignificant group of consumers.

One item in the assessment of whether there is a substantial limitation may be when a lot of data capacity is required to display the advertising. Marketing on the Internet involves increased burdens for the user's Internet connection. This is particularly important for a user with low or limited transmission capacity. Regard to this group of users should be taken into account when designing marketing on the Internet. What should be regarded as low or limited transmission capacity shall be assessed on the basis of the market for Internet access available from time to time.

Marketing should be downloaded behind the current page.

Advertising should not be unfairly intrusive.

Whether advertising is unfairly improperly intrusive shall be assessed in relation to form, content, use of audio, images, animation or other live images and the context generally.

Advertising will always be regarded as unfairly improperly intrusive when it directly affects work in progress on the consumer's computer, alters settings and the like.

a) Marketing that is not an integrated part of a website shall be simple to remove, for example be "clicked off". Dominating advertisements, such as for example full pages, shall also disappear automatically after a short period.

b) A limit should be set for the number of exposures to advertising messages to the individual user. The number will depend upon the relevant marketing format that is used.

c) Methods that deny the consumer control and/or lock the consumer to a particular website shall not be used.

Examples of such methods are the redirection of the consumer to other websites than the website that the consumer has specified as Uniform Resource Locator (URL) (undesired redirection) and use of methods that control surfing by consumers to or from specific Internet pages. Expressions that are used in this context are "mousetrapping" and "pagejacking". The concept of "undesirable redirection" may be considered to comprise several different actions. It is not intended to cover cases of typing errors, for example when the consumer has written the wrong URL in the address field, but is nevertheless taken to the address that is assumed to be desired.

d) Marketing should not interrupt editorial material or other content of an informative or guiding nature on the website.

If marketing is arranged so that it is possible to search within various categories of sellers/service providers, or is in some other way arranged so that the consumer will be able to orientate him/herself in the market, it should be clearly indicated what the criteria are for the result of the search or overview.

Example: If one or more service providers have paid to be shown exclusively, early or the like (given a particular ranking) in a list on the basis of a search, it should be indicated that such criteria have been included in the search, and that the information shown is thus not objective.

SMS, E-mail and the like

When dispatching marketing via e-mail and the like, the sender shall respect the rules for unsolicited e-mail advertising applicable in the country towards which the marketing is directed.

The Nordic countries have different rules. In Denmark, Finland and Norway, active prior consent is required before a business can dispatch advertising via e-mail and the like. In Sweden, e-mail advertising may not be sent if the person has clearly opted-out of the reception of e-mail advertising.

It should be possible to identify all e-mail marketing as marketing in a clear and unambiguous way immediately upon its receipt by the recipient. This means that the recipient should not need to open the e-mail to understand that this involves marketing.

When prior consent is required by the consumer before the dispatch of marketing material, the consent should be voluntary, express and informed, that is to say:

The consent should comprise an active act on the part of the consumer so that the consumer is not bound by passivity through, for example, a check box being completed in advance.

It may not be a condition for concluding a contract that the consumer should consent to receive marketing.

It should be specified what medium will be used for marketing, how often the marketing is sent and for how long periods.

The circumvention of the requirement of consent may be unreasonable, for example by the consumer being urged by the business to forward advertising, or "tip" other consumers about the business's activities, and the person forwarding or tipping receiving a direct reward in the form of a premium, participation in a competition or the like.

All e-mail advertising should contain easily understood guidance about how to decline, by simple means, future advertising. The system for declination should be arranged so that the party that makes such a declination receives a confirmation of this.

Marking of websites (trustmarks)

With the aim of increasing the confidence of consumers for e-commerce, a business can join a so-called marking system (Trustmark Scheme). The requirements that the business must satisfy in order to be affiliated to a marking system should not only refer to rights that the consumer is already ensured by the applicable rules, but also provide the consumer with protection that clearly extends beyond the statutory protection.

The marking system should provide effective compliance control, which among other things means that there is continuous follow-up of compliance by affiliated businesses.

3. Information obligation ➡

All marketing directed at consumers shall be formulated in a clear and unambiguous way and not be misleading, so that the consumer can evaluate the service marketed and any offers.

It should be clearly indicated who lies behind the marketing through details about the name of the business, geographical address and the like. Contact information shall also be provided at other places than on the homepage, for example through links.

It should be clearly possible to identify offers regarding discounts, premiums and gifts together with sales promotion competitions or games that are not unlawful and the conditions for their use shall be easily accessible and presented in a clear and unambiguous way.

It is prescribed by each country's legislation that a considerable amount of information shall be provided before, upon and after a contract has been concluded. The business shall, among other things, provide information about:

Contact information and information about own operations, such as the name of the service provider, geographical address and information that facilitates rapid contact and communications with the seller/the service provider (e-mail address, telephone number, telefax number and the like)

The important properties of the product or service

Any restrictions, limitations or other terms of the offer

All costs linked with the purchase. (The various parts of the price should be specified and added as a total amount. This shall be done no later than at the place of order, normally called the "product basket" or the like.)

During which period the offer or price applies

All important contract terms (Examples of such information may be terms concerning delivery time, terms of payment, the term that the contract runs when it refers to a continuous service or the like.)

Information on whether cooling-off rights apply to the contract in question or not. (As a supplement to the description of the steps required to exercise the cooling-off right, a separate contract term shall be included providing detailed information about the content of the cooling-off right, the relevant time limits and any expenses linked with exercising the cooling-off right.)

The languages in which the contract may be concluded

Costs linked with use where they do not correspond to the normal tariff for the use of the Internet

If specific requirements are imposed to use the product or service, and this is information that the consumer had reason to expect he/she would receive, information shall be provided about such requirements.

Information about any post-sales service and applicable warranty terms

Terms for giving notice terminating the contract, when it applies indefinitely or for a term exceeding one year.

4. Electronic contracts ➡

When it is possible to conclude an electronic contract, the business shall in a clear and unambiguous way provide as much information as is necessary to enable the consumer to evaluate both the product and the offer before the contract is concluded.

As a main rule, a business is bound by the information that has been provided before and in conjunction with the conclusion of the contract.

The function of concluding the contract shall be clearly separated from other functions.

The business shall ensure that the consumer is made aware of all contract terms before the contract is concluded.

The technical solution shall be such that the recipient must work through the terms of the contract in order to proceed on to the conclusion of the contract.

This can be done by the consumer "passing" and "confirming" a page with contract terms before the contract is concluded, possibly by the terms appearing in full text on the page

and the consumer confirming that he/she has seen it by scrolling down over the page and clicking on a confirmation button.

The conclusion of the contract shall technically be arranged so that the recipient can find and correct input errors and discontinue the purchase before the contract is concluded.

The provision may be deemed to be satisfied by the service recipient being given an overview of what has been ordered and what information has been provided before a final order is sent to the party offering the service.

The conclusion of the contract cannot be structured in such a way that the consumer must disclose personal information before the information that shall be provided according to law, such as for example freight costs, appears; see also section 7 regarding Personal information.

The consumer shall clearly understand that a binding contract has been concluded by he/she actively confirming the order.

This should be structured in a way that the consumer shall click on a "confirm order" box/button/icon before the contract is concluded. It is not acceptable to use a "continue" box/button/icon or the like to conclude the purchasing process if the consumer actually concludes a contract by activating it.

The consumer shall, as soon as possible after the order, receive an electronic confirmation of receipt of the order.

The business shall also send an order confirmation containing information related to the concrete order that has been made and information about price and payment.

The consumer shall be provided with a simple means of saving all information, including contract terms, in physical or electronic form.

The information shall be presented in a static form, i.e. the consumers shall not need to take an active step to store it.

Information provided after the conclusion of the contract shall be given in the same language as the preceding marketing.

Not all situations are suitable for electronic communication, for example when it can have major consequences for the consumer if the message is not discovered.

Businesses should therefore only send communications affecting obligations – that is to say, messages, directions and other communications that contain an obligation to act or a legal duty for the recipient – to the consumer electronically when it is undoubtedly indicated by the circumstances that the consumer has him/herself clearly accepted this.

As regards sending e-mail to consumers, the business should be particularly aware that consumers will not necessarily pick up their e-mail from the electronic mailbox as often as they collect their paper post from their mailbox. This means that the business cannot expect that a consumer will react to electronic mail as quickly as the consumer would have reacted in the case of traditional paper post.

5. Payment ➔

A precondition for payment via the Internet is an explicit agreement between the consumer and the business. The business shall be able to document this contract.

The transfer of debit card details and other codes concerning payment systems via the Internet should always be strictly encrypted. The same applies for the subsequent storage of payment information on a server that is linked to the Internet.

Other payment information, such as customer details and order details, should in the same way be protected by encryption or protected in other ways that ensure that this data is not openly accessible/readable for unauthorised people via the Internet.

When using debit/credit cards and other electronic payment forms, the consumer should always, by a receipt or the like, be able to identify the individual payment with the aid of information regarding the date of the transaction, payment recipient and transaction amount.

In payment systems, where the payment is made through the business despatching a payment demand to the payment maker, the business should not send this demand before the product/service has been sent to the consumer. See generally section 10 regarding website security.

Payment shall normally not be made before the product has been delivered. Standard contract terms for advance payment may be deemed unfair. When evaluating the term, importance shall be attached to the following criteria: the need:

whether the seller can document a real need for advance payment

the amount of the payment

the time aspect: how long before the delivery is the amount to be paid in advance

security: whether security is provided for the advance payment.

If the consumer has paid before the product/service is supplied, the business should immediately repay the entire sum, if the consumer claims that the product has not been received or if the consumer exercises a contractual or statutory cooling-off right.

6. Customer services ➔

The business should deliver the product or service as soon as possible. Unless otherwise agreed, delivery should take place within 30 days of the date when the order was made. The estimated delivery time should always be specified in the marketing.

The business should make it possible for consumers to easily, rapidly and effectively come into contact with the business and ensure that there is a functional arrangement for customer contacts, i.e. have a manned customer services. Besides on-line contact, the business should also provide other means of contact, for example via telephone. Information concerning means of contact should be provided correctly, clearly and easily

accessible.

Questions and complaints should be answered and dealt with as soon as possible. The consumer should always be able to make contact with the business without extra expense, e.g. increased tariffs, irrespective of the means of contact. If a complaint cannot be satisfied, the consumer should obtain information about where he/she can refer if he/she is not satisfied with this (e.g. internally within the business, alternatively dispute resolution method, public court, etc.).

Alternative dispute resolution bodies

Denmark: Forbrugerklagenævnet (Danish Consumer Complaints Board), www.fs.dk

Finland: Konsumentklagonämnden (Finnish Consumer Complaints Board), www.kuluttajavalituslautakunta.fi/se

Norway: Forbrukerrådet (Consumer Council), www.forbrukerportalen.no

Sweden: Allmänna reklamationsnämnden (National Board for Consumer Complaints), www.arn.se

A business that uses electronic mail as a means of communication should ensure that messages received from consumers are collected from the electronic mailbox and dealt with as soon as possible.

It should be possible for the consumer to exercise the cooling-off right or make a complaint in a manner that is not more demanding than ordering a product. The business should immediately after the receipt of such demand confirm it in writing. The written confirmation may also be sent via e-mail.

7. Personal information ➔

A business that gathers personal information through the website should have a privacy policy on its website. The policy should be easy to find. The policy should also refer both to the homepage and also to each place on the website where personal information is gathered. The policy should be written in a clear and easily understood way.

The privacy policy should contain information about:

the business's name and address

what information is registered

what the personal information is used for

whether the information is forwarded and in such cases to whom

how long the information is stored

whether the business makes use of cookies

how the consumer can gain access to information that concerns him/her and how the consumer can get incorrect information rectified

the business's data security, see section 10

other circumstances relevant to the consumer.

When gathering personal information, it should be clearly indicated what personal information is necessary for the contractual relationship and what information the consumer may personally decide on submitting.

The business should require active consent by the consumer if personal information will be used for directly addressed advertising or if the information will be forwarded. Active consent means that the consumer him/herself shall personally complete any consent box, i.e. it should not be completed in advance.

Demands should not be imposed that one must release personal information in order to gain access to information that shall nevertheless be submitted according to law or to gain access to the content of a website.

For personal information and children, see section 8.

8. Marketing directed at children and young people ➔

The requirements contained in sections 1 to 7 of this Position Statement apply in connection with marketing directed at children and young people, together with the more stringent requirements prescribed in this section. Furthermore, the special rules that are laid down for the respective country regarding marketing directed at children and young people also apply.

Marketing is often hidden for the child, by the entertainment/play aspects attracting and retaining the child's attention. Furthermore, Internet uses, as a medium, powerful tools such as living images, audio and interactivity, where the child is directly engaged by its own participation in the marketing game. This technology gives opportunities for something more than mere product presentation and reference to a product. The design of the marketing is non-traditional and often includes a virtually total combination of games/play entertainment activities or adventure environments. Examples of this include games where the child/young person plays together with/against trademark logos or activity pages, where this may involve figures linked to the adventure products or where the child shall help them with resolving specific tasks, etc.

Marketing shall be designed so that it is obvious for the age group – which is the target group – that it involves marketing.

Businesses should take into account the level of maturity of the target group and shall therefore not exploit the natural innocence of children and young people owing to lack of experience. Marketing (of products and trademarks directed at children) should not be designed as games or play/activity pages, nor integrated into games or play/activity pages. Nor should games and the like be interrupted by elements of advertising. When sponsors lie behind parts of entertainment directed at children, information of this should be provided, but nevertheless not to such an extent that the focus is exaggerated/mainly on this.

Children and young people should not be urged to buy products or conclude other contracts via the Internet. Minors cannot conclude contracts with binding effect for sales or order of products/services that involve a debt obligation. In such cases, the guardian/parents shall be the contractual party and assume the payment obligation.

In those cases where marketing is directed at children, businesses have an extended liability to ensure that all necessary information, e.g. concerning price, nature of the product and that children cannot conclude a contract, are indicated in a sufficiently clear way by marketing and contract terms.

Personal information may basically only be gathered from adults. Businesses should therefore not gather personal information from minors who cannot conclude a contract. If this is nevertheless done, the business shall first obtain consent from the parents.

Consent may, for example, be obtained by signature of the parents, which shall be sent to the business by post. Consent can also be obtained electronically, for example via a parent's e-mail, subject to the precondition that this consent can be verified by, for example, telephone, e-mail, letter or fax.

Nor should businesses:

send directly addressed advertising to children,

encourage children and young people to provide information about themselves, their

family or other friends,

offer rewards to children and young people in return for them providing personal information, and

use investigations, competitions or other similar methods to gather personal information from children.

Businesses, whose marketing is directed at children and young people or which has a broad appeal to this group, should not use hyperlinks to places that contain material that is not intended for children and young people or which does not comply with current legal rules.

Businesses whose websites are directed at children and young people, and who encourage chatting and the like, have an extended liability to provide information regarding protective rules on the Internet together with good Netiquette. Businesses should also have routines for reviewing their own pages, so that any activities or material that is added to the page and which is not intended for children and young people, or which does not comply with current legal rules, is removed.

9. Liability for the content of websites ➔

As a main rule, a business is liable for all the material that is presented on the business's own website, irrespective of whether the information has been supplied by others. Internet suppliers can also be considered to be jointly liable, in any event if the Internet supplier knows about a violation but does not do anything to prevent it.

When a business via links makes use of other businesses' material as consumer information regarding a product, for example producers' product descriptions, the business is also normally liable for the content of this material.

Businesses should not link to websites or material that, on a cursory review, does not satisfy the principles contained in this Position Statement. If a business notices that a website to which it is linked violates legislation, the business should remove the link in question.

When there is a link on a website to other websites, it should be clear to the consumer when the first website is left.

10. Website security ➡

The business should give clear and unambiguous information about and the extent to which the sales and personal information submitted is kept confidential, see also section 7.

Customer/order information should be protected by encryption or in another way that ensures that the data is not openly accessible/available/readable for unauthorised people via the Internet. This applies both during the transfer and during the subsequent storage in a server, which is accessible from the Internet.

If the information in question is not protected as mentioned, the consumer should be clearly informed about this.

See section 5 concerning security in relation to debit card details and other codes concerning pay systems via the Internet.