

# Protecting Consumers Online

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# Introductory Remarks

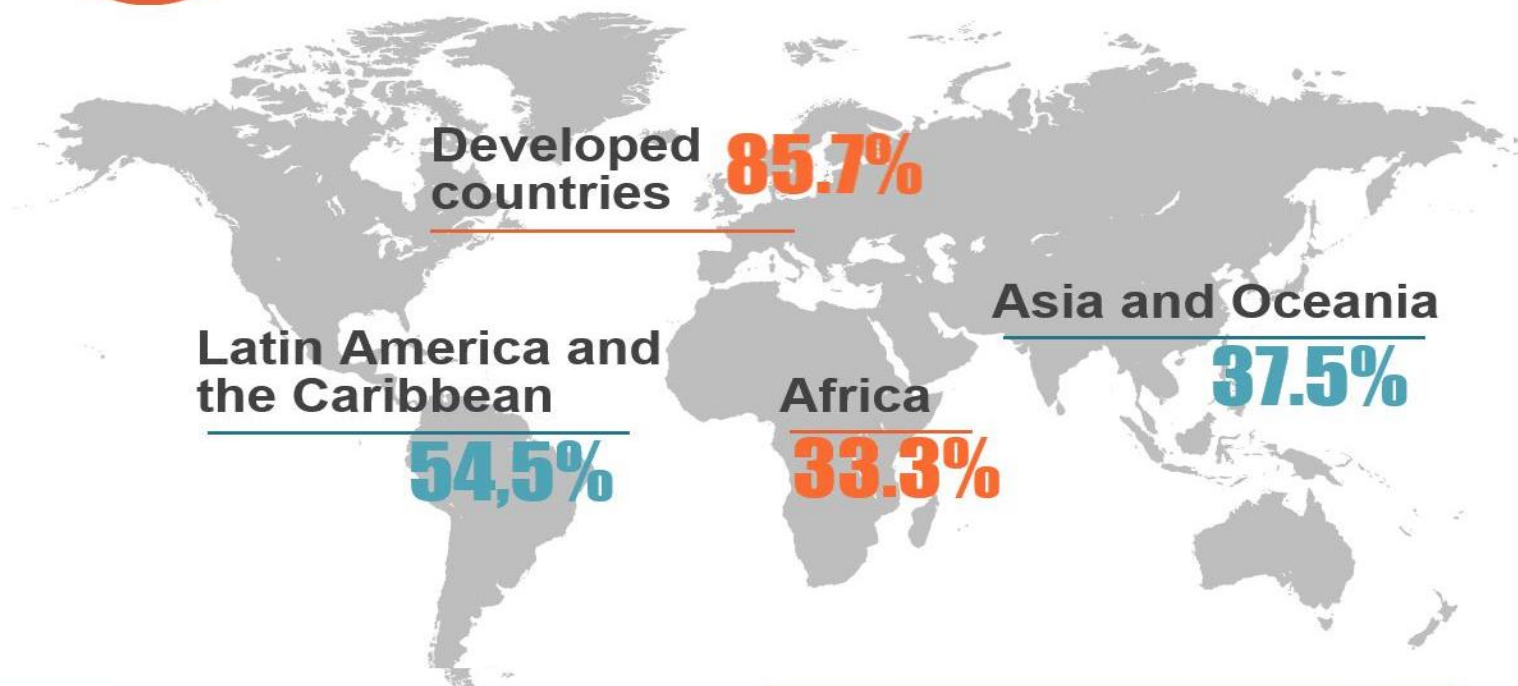
- The ideal of the informed consumer v. anonymity of the Internet
- Different consumer protection standards & different cultural expectations
- Consumer redress on the Internet
- Safety, security & trust
- Cheap marketing & spam
- Social exclusion issues



# Cyberlaws and regulations for enhancing e-commerce around the world 2014



## Share of countries with consumer protection laws



Information Economy  
Report #IER2015

Source UNCTAD, 2015



# Scope

- Protected persons: ‘Consumer’
  - **EU**: “any natural person who.... is acting for purposes which are outside his trade, business, craft or profession”
  - **T&T**: “any person... as the end user of the goods or services offered by the supplier”
  - **Barbados**: “intended for private use or consumption” but not for commerce
- Regulated transactions
  - ‘distance contract’ or ‘using electronic means’
  - Goods, services and products
    - ‘digital content’: “data which are produced and supplied in digital form”

# Substantive Law

- Regulation of advertising and marketing
  - decency, legality & truthfulness
  - certain products: e.g. tobacco, alcohol, medical products
  - marketing to children
  - trade descriptions, price indications, weights & measures and transparency generally
  - marketing techniques, e.g. inertia selling
  - restrictions on certain sales promotions

# Substantive Law

- Control of 'unfair' contract terms in contracts
  - Presumption: *the consumer is weak in both his bargaining power and his level of knowledge*
  - Unfair as to issues of....
    - Substance, e.g. terms deemed invalid (indicative list)
    - Form: e.g. plain intelligible language, incorporation & click wrap
  - Exclusion of liability

# Substantive Law

- Quality and safety of consumer goods
  - Satisfactory quality, conformity with description, fitness for purpose (seller)
  - Product liability (producer)
    - Required to evidence causation, but not fault
- Regulation of consumer credit
  - Formalities: ‘in writing’
  - Joint liability with supplier for defects

# eCommerce laws

- Accurate & up-to-date information
  - “prices are valid until [date]. For a free price list after that date email us at [email address].”
- Information requirements
  - name and details of supplier; company name
  - supplier’s geographical address & email address
  - supplier’s company registration & VAT number
  - authorisation by or membership of professional bodies
  - T&T: ‘sufficient to allow...service of legal process’



# eCommerce laws

- main characteristics of goods
- price of goods, including all taxes and delivery costs
- arrangements for payment, delivery and performance
- consumer's right to cancel and cancellation procedure
- Form requirements
  - EU: in a 'durable medium' – accessible for future reference
  - T&T: "to maintain an adequate record of the information"

# eCommerce laws

- Contract formation (if website)
  - duty of supplier to give consumer opportunity to spot errors and to correct them
    - See also UN Convention (2005), Art. 14
  - acknowledgement of receipt of order

# eCommerce laws

- Redress
  - T&T: right of rescission within 30 days
- Right to cancel the contract within a certain deadline (7 days/14 days)
- Terms of sales promotion must be clear
- Fraudulent abuse of payment cards
  - consumer's right to cancel payment/get reimbursed
  - supplier (and payment provider) bears risk
- Delivery/performance within 30 days

# Jurisdiction & Enforcement

- Enforcement of consumer protection legislation
  - right of action for public bodies and consumer bodies
  - criminal penalties & criminal prosecution
  - contractual or tort liability (civil damages)
- Enforcement in the international context (across a border)
  - which country is competent to apply its regulation?

# Jurisdiction & Enforcement

- Enforcement if supplier has no assets or is not present in the prosecuting jurisdiction
  - bad publicity?
- Enforcement depends on co-operation between national enforcement authorities
  - extradition treaty?
  - treaty on enforcement & recognition of civil judgements?
  - ad hoc?

# Jurisdiction & Enforcement

- International co-operation, harmonisation and complaints bodies
  - International Consumer Protection and Enforcement Network (ICPEN)
  - Econsumer.gov
  - OECD
    - “Guidelines for Consumer Protection in the Context of Electronic Commerce” (1999) –under revision

# Self-Regulation & ADR

- Problem of overlapping....
  - regulatory competence
  - enforcement
- Self-regulation
  - trustmark schemes
  - ADR schemes
    - Trusted Shops
    - BBB Online



# Trustmark Schemes

- How does it work?
  - Code to which supplier voluntarily subscribes
  - Substantive consumer protection standards
  - Complaints procedure
  - Trust mark (*branding*) in conjunction with code
  - Sanction for non-compliance: withdrawal of code
  - Complaints procedure
    - to supplier
    - to trade association/consumer association



# Alternative Dispute Resolution

- Non-judicial dispute resolution
  - arbitration, mediation, mock trials, evaluation, credit card charge back
- More flexible, cheaper & more creative
- Better suited to cross-border disputes
- Use of technology: online dispute resolution
- Who pays? Independence?
- Voluntary co-operation; non-coercive

# Self-Regulation & ADR

- Solves problem of overlapping jurisdictions and lack of consumer redress
- Creates minimum international standards and some certainty for suppliers
- Enhances consumer trust in E-Commerce
- But how effective are these schemes?
- Multifarious schemes confusing and not transparent
- Democratic deficit?

# Unsolicited Contact

- Conduct: ‘unsolicited calls’, ‘supply’, ‘services’, ‘commercial communications by electronic mail’
  - Expression concerns
- Problem of SPAM
  - how is it sent?
  - legislative reaction
    - US: CAN-SPAM Act
    - T&T: option to opt out or commit an offence
  - out-in, opt-out
  - how to protect against
    - technical regulation

# Electronic payments

- Need for instantaneous remote transfer of funds at low cost
  - Credit cards
  - Digital cash / electronic money, e.g. MPesa
    - Card-based or software-based
    - Pre-paid mobile telephony?
- Consumer protection issues
- Regulated providers

# Concluding Remarks