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TELESHOPPING :
NEED FOR A LEGAL FRAMEWORK.

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for the "CONSUMER AFFAIRS" Working Group.
Brussels, 13 July 1988.

TELESHOPPING :

- as a telematic service with specific characteristics in regard to other telematic services (electronic mail, information retrieval services, etc.).
- as a new way to provide traditional services (comparison with direct shopping, with mail order shopping).

CONSEQUENCES : 3 Principles

- Principle of "Specificity" : regulation must be established service by service;
- Principle of "continuity" in regard to previous regulations provided for traditional services;
- Principle of "proportionality" : traditional regulations must be continuously adapted following the evolution of the technology and in function of the new risks and new opportunities created by these techniques.

FRAMEWORK : A CHRONOLOGICAL APPROACH.

1. The Actors.
2. The Access to the teleshopping services
3. The Teleshopping services
 - 3.1. Advertising by videotex
 - 3.2. Contracting by videotex
4. Security
 - 4.1. Integrity - The problem of Evidence
 - 4.2. Continuity
 - 4.3. Confidentiality : the privacy questions.
5. Litigation.

I. THE ACTORS.

1. Principle 1 : Taking into account the arrival of new actors and new strategies.

Direct or
Mail order shopping

Teleshopping

Identity of the actors

- Traditional sector grouped within professional bodies (national associations)
- National strategies

Identity of the actors

- appearance of new actors and new jobs.
- International strategy

Regulation

- hard law provided on a national basis
- soft law ruled by the national associations.

Regulation

- in the context of large public videotex experiences : codes of practices settled up in cooperation with consumers associations and administration.

Consequences.

- Need to open the professional bodies to these new actors;
- Need to promote the existence of an european association;
- Need to implement european minimum standards in order to avoid discrepancies between national regulations (non tariff barriers) and discriminatory rules for foreign service providers;
- Need to observe very strictly the rules of competition;
- Need for public authorities to identify the actors (Registration systems - cfr. the EFT Danish Act).

2. Principle 2 : Multiplicity of actors intervening for the conclusion or the performance of the telematic services
(see infra, Problems of liability and confidentiality).

SCHEMA.

Mail order
Enterprise

Integration

Host computer
Services

Bank

Transport
Enterprise

Bank

User

INTERMEDIARY

Telecommunication
carrier(s).

_____ conclusion of the contract.

----- performance of the contract.

II. THE ACCESS TO THE TEleshopping SERVICES.

1. How to identify the customers ? The problem of the personal code (P.I.N.) - norms to implement in this field.

Principle 1 : delivery only upon customer's request.

Principle 2 : technical and organisational conditions for ensuring the confidentiality and the individual character of the P.I.N.

Principle 3 : obligation to modify the P.I.N. upon the first request of the customer and to stop immediately orders issued on the basis of the previous P.I.N.

Principle 4 : obligation to give clear and readable informations on the risks relating to the communication of the P.I.N. to third parties.

2. Exemptions of some norms for closed users'groups.

Need to have a very strict definition of the concept.

III. THE TEleshopping SERVICES.

3.1. Advertising by videotex.

Problem : - Specific characteristics of the videotex advertisements
- Many discrepancies, between national regulations.

Solution :

Principle 1 : of prior information;

Principle 2 : of exposure only to advertisements or informations that the customer has sought out (e.g. prohibition of an automatic delivery of electronic direct mail advertising);

Principle 3 : of identification and of separation;

Principle 4 : of quality (price, minimal description of the goods, updating of the informations, etc.) : "Advertising must be proper, honest, fair and truthful";

Principle 5 : obligation to identify very clearly the responsible of the advertising;

Principle 6 : obligation to keep a record of the advertisement's pages;

Principle 7 : need to adopt european common standards in this field (see already, 1984 Directive on misleading advertising - COM(84)300 final 14/06/1984).

3.2. Contracting by videotex.

3.2.1. General contractual conditions.

Hypothesis 1 : Agreement concluded before the use of the service (like for telebanking services).

Disclosure including clear and readable informations

- regime of liability;
- cost of the service;
- quality of the statements sent to the customer;
- procedure relating to the prevention of unauthorized use of the system and user connection;
- information necessary for the implementation of the procedures;
- limitations on the use of the service;
- internal or external use of the information on the customer, created by the use of the service.

Hypothesis 2 : Agreement concluded by the use of the service.

Problem : Review of the general conditions over a telematic network entails telephone expenses.

Principle 1 : clear identification of the service provider (name, adress, phone number) on the first page;

Principle 2 : need to develop. standards general contractual conditions within european associations;

Principle 3 : possibility to review on the consumer's screen the content of the general contractual conditions;

Principle 4 : preventive control by an european consumer Council of the general conditions relating to videotex services.

3.2.2. Quality of the service (to be implemented by deontological norms in a souple way).

Principle 1 : Identification of the service provider with explicit reference to his registration number;

Principle 2 : Necessity to have sufficient stocks and updated informations (is the supplier making an offer ?);

Principle 3 : Obligation to identify clearly all the elements (costs, quality, quantity, time of delivery) of the product or of the services available;

Principle 4 : Obligation, after the choice of the customer, to repeat his choose before the order becomes irrevocable (echo system);

Principle 5 : Need to have a convivial system : e.g. transparency of the selection - "Taxi deontology" - Delay for replying;

Principle 6 : If the review of the information is not free of charge, a clear indication of the tariffs (e.g. page by page) must be indicated on the first page of the screen.

3.2.3. Performance Billing and Payment.

Principle 1 : Confirmation of the receipt of the order in writing;

Principle 2 : Delivery of the product which has been ordered within a specified delay;

Principle 3 : Right to return the merchandise during a trial period beginning on the day when the product is delivered;

Principle 4 : The invoice must be detailed so far it makes the customer able to identify when (day and exact time), what and in which quantity he has ordered.

Principle 5 : Right to choose the method of payment.

Principle 6 : In case of payment of a product purchased by teleshopping, payment performed by Electronic Fund Transfer, obligation for the bank to postpone the credit of the beneficiary (solution of the VIA).

IV. THE SECURITY.

Three meanings :

- Integrity : capacity of the teletransmission system to guarantee the non alteration of the message;

- Continuity : capacity of the teletransmission system to ensure a non interrupted service and in the adverse case, to prevent the consequence of such interruptions.

- Confidentiality : capacity of the teletransmission system to guarantee the non divulgation of the data transmitted to non authorized people.

4.1. INTEGRITY.

Problems.

- Discrepancies between national regulations concerning their requirements regarding admissible evidence.

- Specific legislative measures aiming to protect consumers for example to mail order transactions. These measures require for example a written contract.

Need.

- To have common international standards making possible the use of computers for concluding transactions.

Solutions.

1. Implementation of the principles enacted by the Council of Europe recommendation (n° R (81) 20).

"A ... recording (by a computer) ... shall be admitted as evidence in judicial proceedings. Such ... recordings shall be presumed to be a correct and assured reproduction of the original recording of the information it relates to, unless the contrary is proven".

Three supplemental conditions are to be observed.

1. The following rules shall apply to computer programmes : a. The programme write-up, files descriptions and programme instructions must be directly legible and kept carefully up to date under the responsibility of (the responsible person); b. The documents referred to in a. above must be preserved in a communicable form for so long a time as the recordings to which they relate.

2. If, for whatever reason, the data recorded are transferred from one computer to another, the (responsible person) must establish that there is concordance.

3. The following rules apply to computer systems generally : a. The system must contain the safeguards necessary in order to avoid any alteration of the recording; b. The system must also make it possible to reproduce at any moment the information recorded in a directly legible form.

2. Control by an authority of the organisational and technical measures taken by the teleshopping services providers in order to observe the principles of the Council of Europe and taking into account the nature of the services offered;

3. develop alternative measures to protect the consumer's interest (see supra);

4. obligation for the service provider to keep records of the teleshopping transactions during a specified delay.

4.2. CONTINUITY.

4.3. CONFIDENTIALITY.

Problem :

- Multiplicity of the actors
- Nature of the nominative data to be protected.

Solution :

- The necessity of defining in advance the kinds of uses for which information concerning individuals may be put in connection with the use of the service and the period for which such information may be kept on file as well as the exclusion of certain uses (i.e. the transfer of files to third parties, see, art. 9 of the Bildschirmtextstaatsvertrag and the Danish legislation).
- The recognition of an extended right to information for the consumer of telebanking and teleshopping services, particularly when the application for the card is made and when the card is first used.
- The recognition of a specific status for third parties involved in the transaction so that they are bound by stronger secrecy obligations than the suppliers of the services themselves.
- The opportunity which exists in this field to adopt a set of common standards in order to prevent divergent national legislation.

V. LITIGATION - PROCEDURE.

Principe 1 : Improvement of the position of the user with regard to evidentiary problems.

- require the service provider to procedure all the relevant documents in a form and in a language understandable to all;

- define very broadly the concept of error (unauthorized order, incorrect order, computer or accounting error, supply of insufficient or not adequate products or services).

- identify an unique responsible of the entire transaction.

Principe 2 : Adoption of a directive similar to the EEC directive of 25 july 1985 on products liability ?

Principle of strict liability in case of defective telematic services.

SUMMARY : LEGAL PROPOSITIONS.

- Avoid legal obstacles hindering the development of teleshopping services (e.g. evidence or signature rules)

- Limit EEC directives to basic principles related to
 - the delivery of the means of access,
 - the advertising by videotex;
 - the quality of the services;
 - the security of the services;
 - the procedure in case of litigations.

- Encourage the ruling in a souple way by european service providers Association of codes of practice, implementing the various basic principles contained in EEC directives.