



Consumer Rights and Responsibilities

This fact sheet has been developed by the Communications Commission of Kenya as part of Consumer Education Program. It was compiled by studying material from various authoritative sources and adopting what is universally acceptable and relevant to the Kenyan situation. The fact sheet is intended to enable Consumers have a good understanding of the issues discussed and hence empower them when making decisions regarding ICT products and systems.

Introduction

Consumer Rights are best safeguarded when Consumers fulfil their responsibilities. Such rights as the right to quality service delivery are best met when Consumers assist for example in fault reporting and pay their bills on time. Consumers must therefore know that their protection is largely dependent on how well they meet their responsibilities. Secondly, Consumers must be fully aware and understand their Rights and also be willing to demand them. Often they feel that they have little power in the marketplace, especially when dealing with large organizations, and therefore do not exercise their Rights. They sometimes feel powerless when they encounter problems with the goods or services that they procure and do not complain as they find it embarrassing. Even when they know some of their basic rights; they are not aggressive enough to demand them.

In reality however, Consumers do have power and influence in the marketplace which can be exercised if they are well-informed about their Rights and responsibilities. Consumers exercise power by being able to shop around for the best deals, asking the Right questions, knowing how to compare prices and quality and learning how to complain when things go wrong. However, this is only possible when they are well informed which leads to their protection.

Well informed Consumers for example would not be confused by misleading advertising which though common is not only against the law, but also antagonizes potential customers. They understand that advertising and marketing material may not necessarily give the full picture, and further inquiries are always necessary. Many advertisements contain fine print sections with details of conditions and qualifications. Such advertising may be used by some unscrupulous traders to conceal important information that would be critical to a person's decisions to buy the goods or services. Consumers are entitled to information which protects them from false claims about goods, services and prices. It is an offence for any retailer or professional to make a false or misleading claim about goods, services and prices. It is also an offence to sell goods which bear a false or misleading description.

In Kenya, the Rights of Consumers of goods and services are covered in various Acts and attempts are being made to consolidate them through "The Consumer Protection Bill, 2007". The Consumer laws aim to ensure that Consumers have enough information about prices and quality of products and services to make suitable choices on what to buy. They also aim to ensure that goods are safe and are manufactured to an acceptable standard.



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One such Act is The Sale of Goods Act which contains clauses meant to protect Consumers and to prevent unfair trade practices in Consumer transactions. It provides some implied conditions and warranties that must exist in every sale of goods contract. Issues relating to the seller's Right to sell, description of the goods, quality of the goods and warranties are covered in the Act; only safe goods should be put on sale while misleading advertisements and price indications are not permitted.

Consumer Rights

Rights regarding telecommunications services and products

- The Right to have access to basic communications services at reasonable prices.
- The Right to full pre-contractual information that is clear (understandable), helpful, adequate and accurate on the services and choices offered by a service provider/operator to facilitate the making of an informed choice.
- The Right to receive information assistance to assist in use of the services.
- Consumers have a Right to have access to sector governing information.
- The Right to have comparative information.
- The Right to receive a service with a quality that reflects the cost of the service (Value for money).
- The Right to receive the level of quality of service that is quoted or stated by the service provider/operator in the service agreement.
- The Right to fair treatment without undue discrimination from another consumer.
- The Right to fair terms of service.
- The Right to complain about quality, delay, quantity and tariff with regard to the nature of the communication service provided.
- A consumer has a Right to an effective system for handling of complaints.
- The Right to be provided services that are safe and secure.
- The Right to Privacy.
- The Right to be educated on services being offered to them (the Right to Consumer Education).
- The Right to a notification of termination of service particularly that of a basic service or Internet access.
- The Right to make representations to those delivering, regulating or governing the communications services on matters pertaining to the services offered to them and other consumer preference.
- The Right to access billing information.

Rights regarding misleading and fine print advertising

- Claims made about how items operate and where they were made must be true.
- Claims about the time, place or manner in which a service is provided and claims about the effect of a service and the responsibilities of service providers must also be true.



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- Claims about prices; actual prices, previous prices and recommended prices of goods and services must be stated truthfully. Where a price is stated, it should be clear what particular item it relates to. It should be the total price and there should be no hidden extra charges.

If a Consumer believes that he has been misled in an advertisement, they can take the following actions:

- They can Point out the error and demand the seller match the advertising claim
- Refuse to complete the sale
- Report the trader to the appropriate regulatory authorities

Rights regarding unfair contract terms

An unfair term in a standard Consumer contract is a term that is significantly weighted against the Consumer. Such terms can cause a significant imbalance in the parties' Rights and obligations and mostly to the detriment of the Consumer. A supplier of goods or services can have an advantage over the Consumer by including such an unfair term in a contract. Consumer contracts are open to a test of fairness. Any term found by a Court to be unfair, is ineffective and therefore Consumers are not bound by unfair contract terms.

There are three main categories that unfair terms may fall into:

- Terms that gives a supplier of goods or service providers the Right to change the terms of the contract.
- Terms that limits the liability of a supplier of goods or a service provider. For example no liability for death or personal injury arising out of an act or an omission by the supplier of goods or services.
- Terms that put an unfair burden on the Consumer.

This list is not exhaustive. Terms that fit into one of the above categories may be fair and equally a term may be deemed to be unfair which does not fit into one of the above categories.

Unfair terms violate the principle of good faith. If you enter a contract in good faith it means that your intentions are honest. The principle of good faith could be violated by, for example, inserting a term in the small print of the contract agreement where the Consumer cannot see it easily.

In the case of written contracts, all terms must be written in plain, understandable language. If there is doubt about the meaning of a term, the meaning that is most favourable to the Consumer will prevail. If a term in the contract is found to be unfair, the remainder of the contract may still be legally binding on the Consumer and a supplier of



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goods or a service provider. This means that while one term or condition of the contract may be illegal, the remainder of the contract remains in force.

Consumer Responsibilities

General responsibilities

Consumers are expected to make reasonable decisions and accept a certain level of responsibility when exercising choice or entering into transactions in the marketplace. They have a responsibility to:

- Keep informed as best as possible;
- Exercise due care when making decisions in the marketplace; Avoid making hasty or impulsive decisions based on extravagant claims or exaggerated representations. Find out information on issues mostly related to descriptions, standard, quality, value, style or model, spare parts and repair services.
- Consider the detrimental consequences that may arise from ill considered decisions;
- Honour reasonable obligations arising from their decisions.
- Be assertive so as to ensure that they and other users of the service(s) receive a fair deal.
- Protect all communication equipments and facilities within their vicinity.
- Find out first. It is their responsibility to be properly informed.
- Identify 'needs', and differentiate them from 'wants'.
- Obtain as much information on the product or service, and other peoples' experience with similar purchases.
- Compare price, quality standard and features with competing products.
- Access safety issues, such as the age suitability of devices such as mobile phones on children.
- Refrain from entering into any schemes that are promoted with terms such as "get rich quick".
- Understand their financial capability before making any purchase or committing an advance payment.
- Always make a calculation, in a situation where free gifts are offered, of the cost of the associated product then check the cost of "free gifts" to ascertain if the cost of the gift is actually covered in the purchase price, or hidden in some other way.

Consumer responsibility on contracts terms and conditions

A contract is a legally binding agreement between two people where each one agrees to do something for the other and which the law can enforce. The law provides remedies if the agreement is breached or recognizes the performance of the agreement as a duty. Often it involves paying money in exchange for goods or services. Many people mistakenly believe that you can only have a legally binding contract if you have all the details written down and have signed the piece of paper. However this is



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not always the case. When you step on a bus you are making a contract (provided you paid for your ticket), but the driver does not sign a form agreeing to take you where you want to.

A contract is very important because once you have made it and agreed on the terms of the deal you have a legal obligation or duty to go through with it. Changing your mind can cost you money because if you try to back out of it you risk being sued for *breach of contract*. This is the legal term for breaking your agreement; which is basically the failure of a party to a contract to perform his or her obligations as agreed to within the contract. Such an act gives the other person the Right to claim compensation from you. It is one good reason why it pays to be careful before you commit yourself to anything. If the seller breaks the agreement, then you will be entitled to compensation for any losses suffered. If you had paid a deposit or made a down payment you could reclaim it

Consumers should strive to understand their contract. A contract sets out the legal obligations of not only the service provider, but also the Consumer. Read all the provisions in a contract before signing. If unsure of the meaning of certain terms, seek assistance from a lawyer, your friends or relatives who may have had knowledge or similar experience with the related product or service. Similarly you should honour what you have committed yourself to. Be aware of obligations to fulfil, terms of agreements and take responsibility for non-fulfilment of those terms.

Consumers not satisfied with the contract terms should refuse to accept them, instead of hastily entering into agreements and going back on them afterwards.

Keep track of changes that have been made to the contract and do not leave blank spaces in parts of the contract that set out obligations, Rights remedies etc.

Similar products can vary in terms of quality. It's reasonable to expect that a lower price than other competing products can mean lower quality. Realistic expectations with regard to quality should be properly spelt out in the contract to avoid misunderstandings.

Consumer responsibility in electronic commerce transactions

- For Consumers who normally do their trade online, read carefully the terms of the electronic transaction, For example, the terms of payment, including the correct payment procedure to be followed; terms of delivery including the time; period of delivery; guarantees; warranties or other provisions relating to after-sales service;
- Take note of conditions related to return, exchange, cancellation, or refund policy;
- Take note of the trader's privacy policy; and the conditions that apply to online redress mechanisms for resolving disputes.



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- Make sure your Internet security software is up to date and ensure that the purchase method used by the trader has adequate security encryption safeguards this is particularly important when sending out sensitive personal information e.g. credit card numbers.
- If in doubt as to the authenticity of an offer or a request to provide information online, undertake checks with the company via other means, i.e. by telephoning the company's office.

After Purchase:

- Pay required amounts on time and never attempt to evade lawful liability.
- Check receipt, statement or transaction record to ensure that correct transaction details are recorded.
- Keep receipts, product manuals, and maintenance/warranty documents for future usage.
- Send a warranty card (particularly when warranty is offered free of charge) to the manufacturer so that future direct contact can be made if a problem occurs.

Upon Receipt:

- Check products thoroughly immediately upon delivery
- Raise any problems with trader first, before attempting to contact the manufacturer
- Always read any warnings and product information as to installation instructions, maintenance and safe operation.
- Use products according to the instructions, and only for the intended purpose

Consumer responsibility on cable vandalism

What is cable vandalism?

Wires and cables are essential components of nearly all modern computer and communications systems. Because they are often poorly protected, unintentional or malicious damage to these cables can readily occur, potentially causing significant network disruption. Cable vandalism is defined as incidents where a communication cable is damaged, effectively disrupting normal operations and typically requiring an emergency repair response. A single cable being vandalized can disrupt computer network, telephone networks or electricity service to thousands of end users in a short period of time.

In Kenya malicious cable damage is very rampant being fuelled by the increasing price for copper and aluminium. Since it is not feasible to devote economic or human resources to protect every length of communication cable in the country, a vital part of our information infrastructure is essentially left undefended. Groups that target communication cables have the potential of causing widespread network disruption.



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Although the information infrastructure is mostly designed with some redundancy, individuals who know which cables to cut can eliminate redundant cables in order to disrupt service.

Impacts of cable vandalism

Cable vandalism can impact the information infrastructure in a variety of ways. First, it can cause a widespread denial of service to communications customers. The economic impact to the respective end users can be enormous ranging from lost revenues, to inability to make emergency calls. The financial impacts to the service providers are also enormous. The Kenya Power and Lighting Company and Telkom-Kenya are losing up to Sh400 million in a year to vandals, and have been successful in pushing for a total ban on export of copper wires and plates, steel and aluminium to help stem losses arising from vandalism.

Consumer responsibilities

Consumers have the responsibility of not engaging in the business of buying and selling vandalized cables. This activity is classified as illegal and they should report any such trading activity or behaviour to the police. Telkom-Kenya and the Kenya Power and Lighting Company have issued telephone numbers where such activity can also be reported

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Acknowledgement

This Fact Sheet was developed in partnership with Teknobyte (Kenya) for the Consumer Education Outreach Programme by the Communications Commission of Kenya.

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