

DRM and Contract terms – Consumer Rights Jeopardized

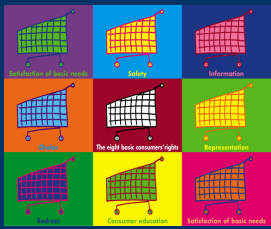
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Advisor

INDICARE Workshop

Budapest

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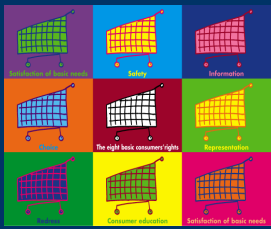


About BEUC

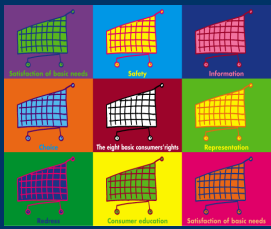


- ✓ The European Consumers organisation
- ✓ Represent 40 member organisations from all over Europe
- ✓ Our job: Influence EU policy in a consumer friendly manner

Introduction



- ✓ DRM has considerable impact on how consumers can use digital products
- ✓ The market cannot correct all types of business behaviour which is contrary to the interest of the purchaser
- ✓ The topic of my presentation:
 - ✓ DRM and terms of contract
 - ✓ Example: [iTunes Music Store Terms of Service](#)



DRM and Standard Terms of Contract

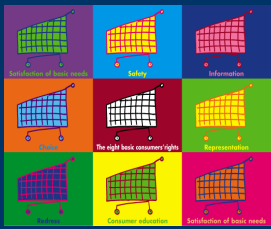
- ✓ Standard terms of contract: regulate how consumers can use digital products legally
- ✓ DRM: regulate how consumers can use digital products *de facto*
- ✓ Not always the same
- ✓ Example: iTunes Terms of Service Art 9b

“You agree that you will not attempt to, or encourage or assist any other person to, circumvent or modify any security technology or software that is part of the Service”
- ✓ Fairplay allows the DRM to be modified

Unilateral change of terms and conditions

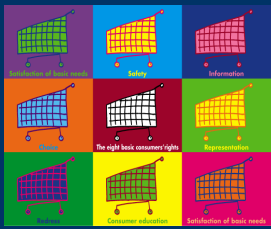
- ✓ Apple reserves the right to unilaterally make amendments after the purchase
- ✓ Art 20 of the Terms of Service:

“iTunes reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement and to impose new or additional rules, policies, terms, or conditions on your use of the Service.”
- ✓ Art 9d: “...you acknowledge that you may no longer be able to use Products to the same extent as prior to such change or discontinuation...”

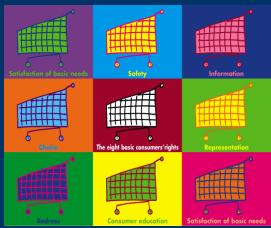


Unilateral change of terms and conditions

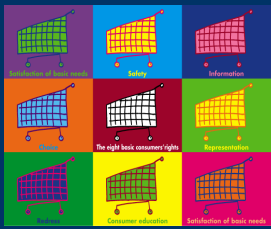
- ✓ Amendments can be enforced through changing the DRM
- ✓ A [study by Intertek](#): possible but technically challenging
- ✓ [Boing Boing](#): iTunes has used this opportunity
- ✓ According to the Unfair Terms Directive 93/13 the right to unilaterally change the terms of contract is unfair



Unilateral change of terms and conditions



- ✓ Changes might not be enforced through DRM
- ✓ According to the legal terms “It is your responsibility to check these Terms of Use periodically for changes.”
- ✓ If the consumer does not respect the amendments, it can have serious consequences



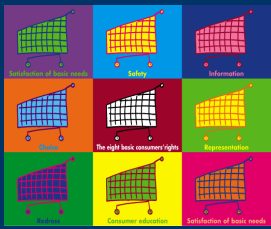
Limitations on Liability

- ✓ DRM systems can cause serious security risks
- ✓ iTunes disclaims all liability for attacks on computers, even if it is caused by security vulnerabilities introduced by Fairplay
- ✓ Art 18a (ii) iTUNES DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND iTUNES DISCLAIMS ANY LIABILITY RELATING THERETO.

Interoperability

- ✓ Fairplay only allows the consumer to use iPod
- ✓ Terms of Service Art. 9b:

“You shall be authorized to use the Products on up to five iTunes-authorized devices at any time
[...]
You shall be able to store Products from up to five different Accounts on certain devices, such as an iPod, at a time.”
- ✓ Both the contract and the DRM prevents you from using other players – or does it really?
- ✓ Easy to circumvent

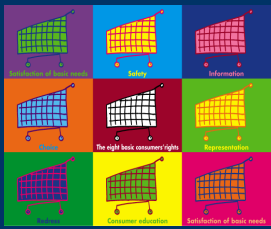


Interoperability

- ✓ Unfair term pursuant to the Unfair Term Directive?

- ✓ Abuse of dominance pursuant to Art 82 EC?

- ✓ National consumer protection law

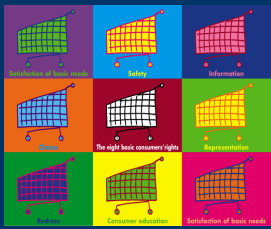


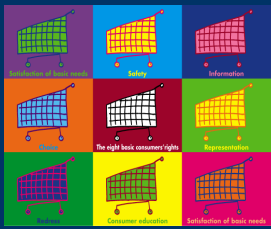
How to change Unfair Terms

- ✓ How do we deal with these kind of terms?

- ✓ Unfair terms Directive Art 7:

“Member States shall ensure that [...] adequate and effective means exist to prevent the continued use of unfair terms”





How to change Unfair Terms

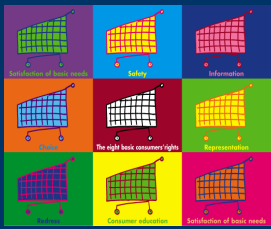
- ✓ Example from Norway
- ✓ Competent administrative body: The Consumer Ombudsman
- ✓ Marketing Control Act Section 9a:

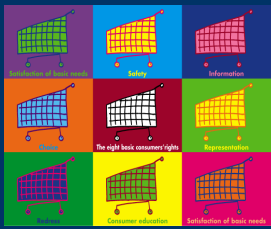
“Terms and conditions which are applied or are intended to be applied in the conduct of business with consumers can be prohibited if the terms and conditions are considered unfair”.

How to change Unfair Terms

- ✓ The Consumer Council of Norway has brought a complaint against iTunes

- ✓ Arguing that both the Terms of Service *and* the DRM is unfair





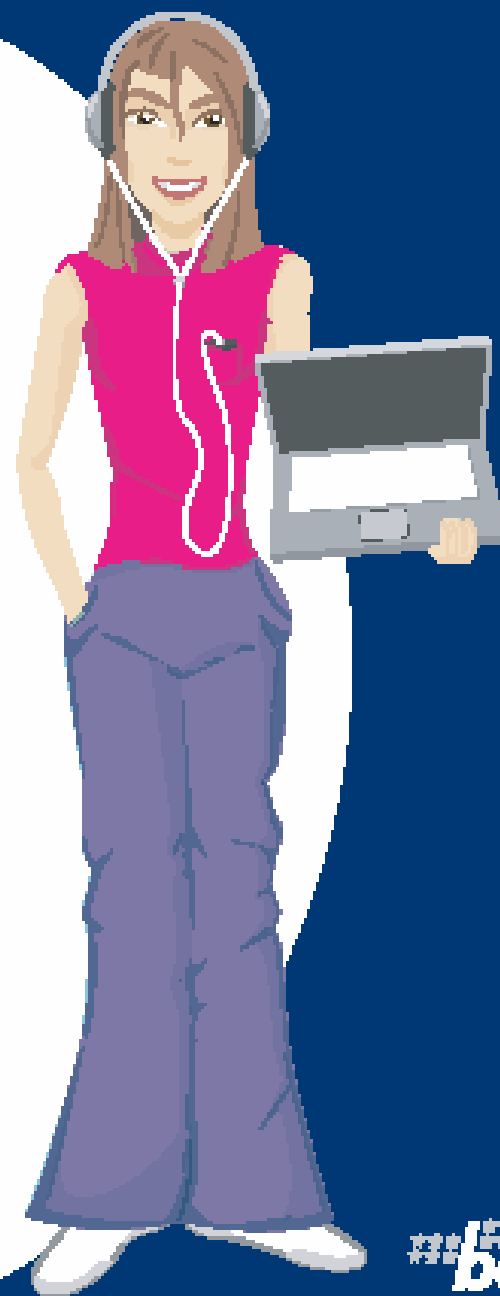
Conclusion

- ✓ Current legislation can be used
- ✓ But is insufficient
- ✓ Legislative initiatives only takes the interests of business into consideration
- ✓ That is why BEUCs campaign is so important
- ✓ Support our campaign for stronger digital rights to the consumer!

Sign the petition at:

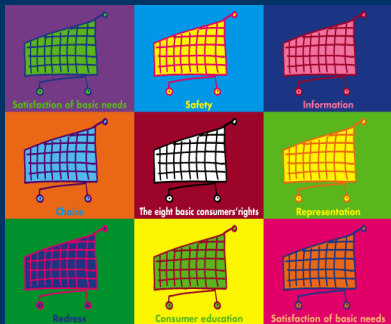
<http://www.consumersdigitalrights.org/>

Campaign for Digital Rights for Consumers



CONSUMERS DIGITAL RIGHTS

BEUC



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Bureau Européen des Unions de Consommateurs

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