



Consumer Protection Issues for Insurance E-Commerce

Presentation to NAIC E-Commerce Working Group

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The Center for Economic Justice

CEJ is a non-profit consumer advocacy organization dedicated to representing the interests of low-income and minority consumers as a class on economic justice issues. Most of our work is before administrative agencies on insurance, financial services and utility issues.

On the Web: www.cej-online.org

Why CEJ Works on Insurance Issues

Insurance Products Are Financial Security Tools Essential for Individual and Community Economic Development:

CEJ works to ensure ***fair access*** and ***fair treatment*** for insurance consumers, particularly for low- and moderate-income consumers.

Insurance is the Primary Institution to Promote Loss Prevention and Mitigation, Resiliency and Sustainability:

CEJ works to ensure insurance institutions maximize their role in efforts to reduce loss of life and property from catastrophic events and to ***promote resiliency and sustainability*** of individuals, businesses and communities.

Overview

- 1. “The Amazon Effect” and Consumer Demand**
- 2. Terms and Conditions**
- 3. Dark Patterns**
- 4. E-Commerce Activity Analytics**
- 5. Racial Bias / Digital Divide**

The “Amazon Effect” and Consumer Demand

Advances in digitalization and e-commerce hold huge potential to speed up traditional insurance processes and help insurers reach new markets – particularly traditionally underserved markets.

But, insurance is not like most consumer products. It’s one thing to buy a pair of slippers or a book with one click – those are products whose performance can be quickly evaluated and, if not up to snuff, returned.

Insurance is a complex financial protection product that promises a future benefit for which there is no data about how well the product performs.

References to Amazon or Generation Z demands have limited relevance for considering issues of e-commerce in insurance.

Terms and Conditions

While we like to think of e-commerce in insurance as simply giving consumers the option to engage digitally instead of in person and with paper, the reality is that every digital transaction comes with terms and conditions. There is currently no oversight of such e-commerce terms and conditions and those being used seem to have been written by lawyers high on laughing gas.

Engaging in E-Commerce should not require a consumer to have an attorney review the terms and conditions nor agree to unlimited use of personal information without recourse. **Regulatory guidance for plain language and unacceptable provisions in e-commerce terms and conditions is needed.** Consider the following required consents for a title insurance transaction.

PART 2: CONSENT TO REMOTE ONLINE NOTARIZATION with Audio/Video Recording Release

By initialing here, you acknowledge that you consent to remote notarization and that your image, voice and comments may be recorded and re-broadcast.

I hereby grant to [XXX] the following rights:

- 1.The right to record my name, image, likeness, photograph, picture, likeness, biographical information, and voice as well as my government-issued photo identification by any technology or means.
- 2.The right to copy, use, publish, display, distribute, digitize, reproduce and archive such recordings of me for any legitimate purpose, in any manner or medium, whether now known or hereafter developed, for the purposes set forth above.
- 3.The right to combine such recordings of me with other images, recordings, or printed matter in the production of CD-ROM or any other media.

4.The right to record, reproduce, amplify and simulate my image and all sound effects produced.

5.The right to assign, transfer, or license the above rights to third parties.

I shall have no right of approval and no right to receive compensation, now or in the future, in connection with Company's exercise of the rights granted hereunder.

I hereby assign to Company any and all copyright I may have in the recordings made of me hereunder.

I hereby release and forever discharge Company, and it officers, agents and employees from any and all claims, demands, rights and causes of action of whatever kind that I may have, caused by or arising from Company's exercise of the rights granted hereunder and the use of recordings containing my image or voice, including all claims for libel and invasion of privacy or infringement of rights of copyright and publicity.

Another Recent Example:

I irrevocably grant and release to [XXXX], its licensees and assigns:

- (a) the right to interview me, to photograph and film and otherwise visually and audiovisually record me and to record my voice
- (b) all rights, without restriction, exclusively, throughout the universe and forever, in all information given in the interview, and all films, photographs, recordings produced hereunder (collectively the "Material"), which all shall be considered granted to [XXXX] on a gratis license in perpetuity, including, without limitation, the right to use all or any part of the Material in any media whatsoever, including, without limitation, on the [XXXX] website for any use whatsoever
- (c) the right to use my name, biography and likeness and other personal identification in connection with any of the rights granted above
- (d) the right to edit, dub, add to, subtract from or modify the Material in any manner and to combine it with any other material.

I warrant and represent that use of the Material as permitted herein will not violate any right of any nature of any person, corporation or other entity.

Dark Patterns¹

Dark Patterns is the term used to describe digital designs created to make users do things they might not want to do that benefit the business, but not necessarily the user. “Dark patterns rob customers of their agency.”²

This may take the form of providing misleading nudges to take action or difficulty finding the preferred option.

Regulatory best practices and consumer protections for paper-based applications, information and disclosures are not sufficient or necessarily suited to digital interactions. Action is needed by regulators to develop the skills to recognize dark patterns in insurance and to stop unfair and deceptive digital interactions.

¹ <https://www.darkpatterns.org/>

² <https://medium.com/adventures-in-ux-design/dark-patterns-and-the-ethics-of-design-31853436176b>

E-Commerce Activity Analytics

The use of e-commerce creates new personal consumer information about the consumer's digital behavior and interactions.

These new data include how a consumer completes an on-line application – how quickly a single piece of information is entered, how quickly an entire application is completed, speed of key strokes, whether an answer is revised before submission.

WSJ 9/21/21: “Apple is working on iPhone features to help detect depression, cognitive decline – Company is working with UCLA Biogen to see if sensitive data like facing expressions, typing metrics could signal mental-health concerns”

Insurance vendors are already marketing algorithms to assess consumer “biological age” and “candor” from video interactions with consumers.

Recently, a telematics subsidiary of an insurer pitched its ability to identify the most valuable customers in real time:

Attract the most profitable drivers with telematics-based targeting

Traditionally, insurance marketing has relied on demographic and behavioral data to target potential customers. While useful at a high level, these proxies fall short when it comes to considering customer value and retention. Now, you can reach the most profitable customers from the outset using the nation's first telematics-based marketing platform.

Company intelligently layers driving score onto insurer campaign targeting criteria to purchase the ideal audience based on quartiles of driving risk. [The] Scored user receives a targeted offer via awareness and performance channels

Not to be outdone, another telematics data vendor announced a partnership with an auto manufacturer

Insurers can harness the power of connected Hyundai vehicles as a new marketing channel to support the profitable growth of their behavior- or mileage-based programs. Discount Alert allows insurers to deploy personalized marketing offers directly to drivers through Hyundai's online owner portal and contains robust tools to anonymously segment ideal risk targets—ensuring your offers are only sent to qualified leads.

All of this begs the questions, what about consumers and businesses who don't have the wealth to provide the value sought by insurers? How do these strategies line up with public policies against discrimination on the basis of race and promoting widespread availability of insurance?

Racial Bias / Digital Divide

The use of e-commerce and increased digital interactions must not marginalize historically-disadvantaged groups or communities.

The use of e-commerce tools should explicitly consider potential bias on the basis of race and ensure access for people with disabilities.