

## Recension. Consumer rights and e-commerce

### *Recensión. Derecho de los consumidores y comercio electrónico*

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As a result of the pandemic caused by covid-19, e-commerce has experienced unprecedented growth and consolidation. Although the trend was upward before the health crisis, the increase has been extraordinary due to worldwide confinements. Virtual shopping has gone from being a casual, even daily occurrence in some remote cases, to something crucial and essential for a relatively large sector of the population. To a certain extent, it can be said that behavioral patterns have migrated from the physical to the virtual world.

There are numerous studies on the future of e-commerce. According to the eMarketer report, e-commerce will continue to show promise, but will not experience such remarkable growth as in recent years. Since 2011, when eMarketer started measuring the development of e-commerce, this activity has been growing at over 20%; taking previous years into account the figures should be put in context, so it is estimated that globally in 2022 it will grow by 12.2%.

It is also worth considering that the use of mobile e-commerce (m-commerce) will slow down in relation to past years, despite the fact that it currently represents more than 65% of all digital purchases. In quantitative terms, globally, the current year is expected to close with sales of \$4.9 trillion, surpassing \$5.5 trillion by 2023. Once 5 trillion is surpassed, it is expected to surpass 5 million every year.

However, although digital commerce is experiencing vigorous and significant increases, it is clear that physical or face-to-face purchases are not going to disappear, and that they will have to coexist with virtual ones. Considering this scenario, the monograph under review deals, as the title itself makes clear, with the rights of consumers in the digital environment. Before going into the subject, it should be pointed out that the author uses clear, simple and direct language. This may be due to the fact that his target audience is not only lawyers or legal professionals in the strict sense of the word, since the subject matter is likely to be of interest to anyone who needs to have knowledge of the subject matter addressed.

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Francisco González de Audicana Zorraquino, Magistrate of the Court of First Instance of Barcelona, Spain, and author of this work has written other books on the subject, such as *Fintech B2C, legal and practical analysis* (2019); he has also been a speaker at a significant number of conferences on Consumer Law. *Consumer law and e-commerce*, the work under review, is the subject of publication by Wolters Kluwer (La Ley), a publishing house ranked eighth according to Scholarly Publishers Indicators, a list that measures the prestige of scientific, national and foreign publishers. The collection in which it is included is directed by Xavier O'callaghan Muñoz, Magistrate of the Supreme Court and Professor of Civil Law at the Complutense University of Madrid, Spain.

The book has a total of seven chapters, the contents of which are briefly outlined in the following paragraphs. By way of introduction, the first chapter addresses the exponential and disruptive rise of e-commerce. As the author determines, the law related to new technologies, and by extension that related to e-commerce, is a living law, in constant evolution, which seeks to adapt to reality. In these first pages, quantitative data on the network of networks and electronic commerce are highlighted, as well as certain assessments formulated by some community institutions (especially by the European Commission).

In the words of Gonzalez de Audicana Zorraquino, the book gives a view from the point of view of the consumer, the citizen who acquires a contractual link with a click, by virtue of electronic means (generally by paying); at this point, it should be noted that the commitment and benefit of the citizen is also possible by means of transferring his data. Consumers are the subject of analysis in the next chapter. In this chapter, the author explains why a person is protected when he or she holds the status of consumer, and also delimits when he or she has such a position and, consequently, at what point his or her rights operate in the field of electronic commerce.

Among the latter, the right of withdrawal, the possibility of settling disputes digitally and the guarantees attached to the products that are the object of the transaction are worth mentioning, which cannot, in any way, be conceptualized as a plus of the business, but as an unbreakable right. Similarly, other supplementary issues are addressed, such as the law applicable to the case, to the clear and transparent information that merchants must offer in the processes for contracting in e-commerce. The responsibility implied thereby falls on the professional, the intermediary platform and any operator of information society services. In this regard, the assessments made in relation to the case law of the Court of Justice of the European Union (CJEU) are timely and clarifying.

Chapter three deals with e-commerce. First, a distinction is made between e-commerce and electronic contracting, concepts that are related and supplementary. E-commerce is any negotiation that takes place on the Internet through platforms, social networks or directly through the service provider, while electronic contracting involves the acquisition of a contractual link, a set of rights and obligations, through networks using any electronic device or means (computer, smartphone, tablet, television, among others). The text then lists and analyzes the principles of electronic commerce: functional equivalence, preservation of the pre-existing law of obligations

and private contracts, technological neutrality, principle of party autonomy, relativity of the contract and good faith.

The author's analysis of product and service providers deserves special attention. Information society services are all those services that enable information to flow globally through networks, including the operators that make data transmission possible. Among the latter are suppliers or providers of goods and services, and anyone who offers goods or services on the Internet. In e-commerce, a prominent position is occupied by intermediary or online platforms which, as their name suggests, perform as mediators between suppliers of goods or service providers and the end user. The author gives a detailed account of both this subject and its national and Community regulation.

The fourth chapter deals with the rights of consumers in e-commerce contracting. Here, two major issues are distinguished: the obligations of the entrepreneur and the rights that can be quoted in digital contracting. In Spain, for example, there are three major laws that protect the rights of e-commerce users: the Organic Law on Data Protection, the Law on Information Society Services and the Consolidated Text of the General Law for the Defense of Consumers and Users.

In e-commerce, all websites must comply with a set of requirements that aim to make known, in a clear and transparent manner, the product or service that is purchased and who is responsible for the sale thereof. It is, in short, to offer pre-contractual information (prior to the contract), essential to configure our will to trigger our consent (for example, when it is transmitted on the web or by email as a commercial offer or advertising your product or service).

Particularly suggestive are the assessments made with regard to the right of withdrawal or the cooling-off period. The latter is mandatory and, on the basis of it, the contract is terminated by notifying the trader without the need to justify the decision and without penalty of any kind. Thus, it is mentioned that before entering into claims of any kind, requirements, arbitration awards or legal actions, it should be taken into account that when a remote purchase is made, there are 14 days to return the product if it is not satisfactory for any reason and without the need to justify it.

In a complementary way, the author analyzes the rights held by the consumer, through a thorough examination of the general conditions when purchasing certain goods or services on some contracting platforms, such as Amazon, Wish, Alibaba, Ebay or Zalando. There currently are approximately one million websites globally, of which only 1.5% are marketplaces, which in turn generate half of the world's e-commerce turnover (a trend that is on the rise).

After the pandemic, digitalization of commerce has increased significantly, and a new consumer profile has emerged that could be considered more demanding, since, among other aspects, their demands would not be covered by the more traditional websites. It should also be noted that a large part of the success of marketplaces is due to their diversity and flexibility. There is a wide spectrum that adapts to any business model, so choosing the most appropriate one for individual or business needs is essential.

One clear fact is that marketplaces are no longer the future, but the present, allowing consumers (individuals or companies) to make the most appropriate decisions.

For the protection of consumer rights, grouping in a collective way could certainly be more effective, so it is relevant to transfer a special role to institutions or organizations in defense of consumers. Among these we can highlight the Public Prosecutor's Office, consumer associations, platforms that are created collectively to protect individual rights and interests (which become collective), and, of course, the Spanish Data Protection Agency, which plays an important role in privacy matters. It is vital to react to any abuse that takes place with consumers and users since, on more occasions than desirable, injustice arises from the dominant position of large platforms.

The aspects common to e-commerce contracting are analyzed in chapter five. This chapter deals with a range of relatively heterogeneous issues: digital identification by means of electronic signature and proof of the electronic contract. The digital contract is generated within e-commerce and is understood as a perfected document that is binding from the very moment of acceptance. It is appropriate to emphasize that, in the conclusion of this contract, the consumer or user is at his habitual residence and that this electronic document is fully interoperable without any additional requirement.

The author also examines payment in a broad sense, analyzing every payment method currently in use. Payment is the most relevant moment of electronic contracting, it is the last step of the digital transaction and, moreover, it must be clearly identified. Recently, contact with physical money (contactless payments) has been significantly reduced and online payments have grown significantly. To date, the most widely used mobile payments globally are Apple Pay, Google Pay and Samsung Pay.

In a very short period of time, we have gone from paying in cash or cash (anonymous par excellence) to being able to settle by giving our personal data or even by means of cryptocurrencies (within the latter, the use of the bitcoin stands out). When considering the trends for the future of e-commerce, we can point to the creation by operators of more flexible payment methods. Among the latter, bank cards, transfers and the PayPal platform are currently predominant, while Bizum and invoicing via mobile devices are gaining ground.

At the time of payment of the transaction, the regulations established by the European Directive on Payment Services include new forms of payment, and establish a double authentication system to ensure the security of transactions. This system requires the application of two or three different factors, using something the user knows (password) and something he or she possesses (e.g. a smartphone), or a fingerprint or image related to facial features –as can be deduced, biometrics is making headway with a promising future in the field.

It cannot be denied that we are witnesses, but also the main characters of a phenomenon that we have already announced in advance: instruments that allow us to pay without contact in an almost imperceptible way. These include the so-called wallets, created by the major cell phone manufacturers, the so-called mobile-money in emerging countries without previous payment infrastructures, QR payments, RFID technology or

Radio Frequency Identification (RFID). With the latter, we can pass through a toll booth without having to stop our vehicle or place items in a space prepared by the merchant where the prices will be detected automatically and we will only have to make the corresponding payment.

The study of out-of-court online dispute resolution cannot be left aside. The countless transactions carried out in e-commerce imply consequent complaints and claims for lack of conformity with the product or service supplied. It would be desperate for the consumer and, to a certain extent, for the economic system, to refer all these disputes to a judicial response, which has a wide range of disadvantages for the user.

However, it is not enough to have rights, they must be enforceable in a proper manner. With good judgment, the author lists the options available to the consumer in the event of a dispute with an information society service provider, such as ADR (Alternative Dispute Resolution) and ODR (Online Dispute Resolution) mechanisms. The author also refers to the possibility of making an initial complaint to the merchant.

The progressive digitalization of transactions has certain risks that should be foreseen, especially when you have limited experience as an Internet user or are not a daily buyer in virtual stores. Among the most significant dangers of e-commerce are the emergence of fraudulent websites, fake vendor profiles and unreliable payment methods. In fact, the Spanish National Institute of Statistics states that one of the most important reasons for not buying online is the possible violation of privacy or security in the payment of the price and the lack of knowledge to carry out the transaction. In this regard, self-regulatory bodies operating in the field of digital transactions and interactive advertising play a very important role. In the case of Spain, for example, the specific case of Advertising Self-control can be mentioned.

The sixth chapter of the book deals with the cases in this area that have been analyzed in the national and European courts of justice. Of the casuistry on which the author dwells, it is worth referring to the litigation arising between collaborative platforms in the field of transport (Uber and Blablacar) analyzed in the CJEU of 20 December 2017, where it was concluded that Uber is responsible for the transport service. In this case, it should be noted that non-collective urban transport services and services linked to it (within which Uber is included) are not regulated in Europe, but it is up to each of the 27 of the Member States individually. Naturally, such regulation will have to be observed in the Treaty on the Functioning of the European Union.

The author examines other no less relevant national rulings, such as the Judgment of the Provincial Court of Madrid of 18 February 2019, which concludes that BlaBlaCar is a provider of information society services where the activity of transportation is not essential. Likewise, regarding collaborative platforms in the field of accommodation (Airbnb vs. Booking), the CJEU of 19 December 2019, case C-390/18, qualifies Airbnb's activity as an information society service. The latter offers a global service that takes over the accommodation service, other than those regulated as real estate agents or professionals, so they are not required such assumptions as a license or professional card.

Finally, in the last chapter, the author outlines the reasons for writing this monograph and what subjects have been deliberately left out of the contents addressed. Among these, he highlights the case of smart contracts, blockchain, cryptocurrencies or others related to the usual services offered by digital means, financial services, package travel, and land and air transport services.

In short, the work under review, due to its inherent virtues, is a reference monograph in the field of consumer law in general and electronic contracting in particular. We must be aware, as we are the main characters, that the digital revolution is spreading more subtly and with greater speed in these times. The technological benefits are unquestionable and we face them as a prize that we do not want to give up at all. E-commerce has a larger cast of uncontrollable nuances, as it focuses its attention on major technologies that represent a major concern not only for individuals, but also for large corporations and for States. There is no doubt that we are dealing with a branch of law that is particularly novel because of its disruptive nature.

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#### HOW TO CITE

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